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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 112
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 31, 2005
1:38 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 112

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, AUGUST 31, 2005

16 1:38 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
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THE HISTORY OF THE
CITY OF BOSTON

1780

THE HISTORY OF THE
CITY OF BOSTON

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CITY OF BOSTON

THE HISTORY OF THE
CITY OF BOSTON

APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

MARY ANN LUTZ, Member
California Regional Water Quality Control Board
Los Angeles Region

ASSEMBLY MEMBER CAROL LIU

KAREN SCHAMBACH, California Field Director
Public Employees for Environmental Responsibility

YVONNE HUNTER, Los Angeles County Division
League of California Cities

JASON GONSALVES
City of Bellflower

CRAIG JOHNS
Calleguas Creek Watershed Association

1 CYNTHIA K. TUCK, Member
California Air Resources Board

2 TERRY TAMMINEN
3 Cabinet Secretary

4 ALAN LLOYD, Ph.D.
5 Cabinet Secretary

6 BARBARA RIORDAN, Member
Air Resources Board

7 KAREN ROSS, President
8 California Association of Winegrape Growers

9 BARRY BROAD
10 Teamsters and Machinists Unions

11 DIANE WITTENBERG
12 Speaking on Own Behalf

13 JACKSON R. GUALCO
California Association of Pest Control Advisers
14 California Council for Environmental & Economic Balance
Imperial Irrigation District
15 Modesto Irrigation District

16 GENE LIVINGSTON
17 Livingston & Mattesich

18 MARK PAWLICKI
California Forestry Association

19 DOMINIC DI MARE
20 California Chamber of Commerce

21 EDWARD MANNING
22 Rubber Manufacturers Association

23 MIKE FALASCO
24 Wine Institute

25 JAY McKEEMAN
California Independent Oil Marketers Association

26 RENEE PINEL
27 Western Plant Health Association
28



1 GEORGE GOMES
California Farm Bureau Federation

2 LOUIE BROWN
3 California Grocers Association
California Citrus Mutual
4 California Cotton Growers Association
5 Nisei Farmers League
California Grape and Tree Fruit League
6 Western Plant Health Association

7 BOB LUCAS
Carrier Corp and United Technologies Corporation

8 K.C. BISHOP III
9 Chevron Corporation

10 DON GORDON
11 Agricultural Council of California

12 LEONARD W. HEGLAND
13 Chemical Industry Council of California

14 ANNA-MARIE STOUDE
15 California Restaurant Association

16 ROB NEENAN
California League of Food Processors

17 MEG CATZEN-BROWN
18 California Water Service Company

19 SOYLA FERNANDEZ
20 Southern California Edison

21 JERRY DESMOND, JR.
Metal Finishing Association of Southern California

22 KEITH DUNN
23 Consulting Engineers and Land Surveyors of California

24 DAVE PUGLIA
25 Western Growers

26 CLIFF MORIYAMA
California Business Properties Association

27
28



1 TIM COYLE
California Building Industry Association

2
3 DEBORAH MATTOS
Lumber Association of California and Nevada
4 Evergreen Holdings

5 MEL ASSAGAI
International Truck & Engine Corporation

6
7 MARGARET BRUCE
Silicon Valley Leadership Group

8
9 ROCK ZIERMAN
California Independent Petroleum Association

10
11 MIKE WEBB
California Building Industry Association

12
13 JOHN R. ULRICH
Applied Process Technologies

14
15 JACK STEWART
California Manufacturers and Technologies Association

16
17 PAUL GLADFELTY
Associated General Contractors
Caterpillar
S.C. Johnson

18
19 GAVIN MCHUGH
California Auto Dismantlers Association

20
21 PETER MCGAW
Contra Costa Council

22
23 BILL KRAUSS
California Mining Association

24
25 CRAIG JOHNS
Partnership for Sound Science and Environmental Policy

26
27 SEAN EDGAR
Clean Fleets Coalition

28



1 BONNIE HOLMES-GEN, Assistant Vice President
Government Relations

2 American Lung Association of California

3 DONNA GERBER, Government Relations Director
4 California Nurses Association

5 MARTHA ARGUELLO, Director
Health and Environmental Programs
6 Physicians for Social Responsibility

7 JANE WILLIAMS, Executive Director
8 California Communities Against Toxics

9 TIM CARMICHAEL, President and CEO
Coalition for Clean Air

10 SUJATHA JAHAGIRDAR
11 Environment California

12 LA DONNA WILLIAMS
13 People for Children's Health and Environmental Justice

14 YOSHIKO ACEY
15 Citizens Against the Dump Expansion

16 BILL MAGAVERN
Sierra Club of California

17 JEAN CAIN
18 Suisun Citizens Against the Dump Expansion

19 BRIAN CAIN
20 Suisun Citizens Against the Dump Expansion

21 V. JOHN WHITE, Board Member
California League of Conservation Voters

22 ANN NOTTHOFF, California Advocacy Director
23 Natural Resources Defense Council

24 SUSAN SMARTT
25 California League of Conservation Voters

26 VIRGIL WELCH
27 Planning and Conservation League

28



1 STEPHEN LOW
Communities for a Better Environment

2 TINA ANDOLINA
3 Coalition for Clean Air

4 JESSE N. MARQUEZ, Executive Director
5 Coalition for a Safe Environment

6 DONNA L. EARLEY, Member
Southwest Low-Level Radioactive Waste Commission

7 JAMES G. TRIPODES, Member
8 Southwest Low-Level Radioactive Waste Commission

9 OTTO G. RAABE, Ph.D., Professor
10 University of California, Davis

11 ALFRED JOHN AHLQUIST
12 Northern California Chapter
Health Physics Society

13 MARCIA HARTMAN, President
14 Health Physics Society

15 KATHRYN SCOTT
16 California Hospital Association

17 JAMES CASE, Health Physicist
UCD Medical Center

18 DAN HIRSCH, President
19 Committee to Bridge the Gap

20 BILL MAGAVERN
21 Sierra Club California

22 PHILIP KLASKY, Co-Director
Bay Area Nuclear Waste Coalition

23 WARD YOUNG, Co-Director
24 Bay Area Nuclear Waste Coalition

25 SUSAN BASSEIN
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STEVEN TAN, M.D.;
Member, Fish and Game Commission: RICHARD B. ROGERS;
Members, Mining and Geology Board:
ERIN D. GARNER, SEENA N. HOOSE, JULIAN C. ISHAM, and
ROBERT E. TEPEL;
Members, Park and Recreation Commission:
SOPHIA D. SCHERMAN and ACQUANETTA WARREN;
Members, Board of Pilot Commissioners for the
Bays of San Francisco, San Pablo & Suisun:
NANCY L. WAGNER and DAVID I. WAINWRIGHT;
Members, Teacher Credentialing Commission:
CATHERINE BANKER, MAYTTE BUSTILLOS, PAUL CLOPTON,
GUILLERMO GOMEZ, GLORIA GRANT; AIDA MOLINA,
LESLIE SCHWARZE, and JON STORDAHL;
Members, California Regional Water Quality
Control Boards: JOHN W. CORBETT, North Coastal Region;
ERIC T. ANDERSON, San Diego Region; ALAN L. BARRETT,
San Diego Region; DANIEL E. JOHNSON, San Diego Region;
JENNIFER L. KRAUS, Ph.D., San Diego Region; SUSAN E.
RITSCHER, San Diego Region; JOHN H. MULLER, San
Francisco Bay Region; and JOHN B. WITHERS, Santa
Ana Region

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to begin as a subcommittee of two loyal and faithful Democrats.

Our first appointee appearing today is Mary Ann Lutz, L.A. Regional Water Quality Board.

Assemblywoman.

ASSEMBLYWOMAN LIU: Good afternoon, Senator.

It's my pleasure to introduce Mary Ann Lutz. She's the Mayor Pro Tem of the City of Monrovia, which is in the 44th Assembly District. I'm here to introduce her as an incoming member, hopefully, with your confirmation, to the Los Angeles Regional Water Quality Control Board.

Mary Ann has had a long history in environmental and civic community affairs, and I know that you will give her nomination your thoughtful consideration.

Thank you.

CHAIRMAN PERATA: Thank you.

Let me make this comment before you respond, Ms. Lutz.

We are hearing 22 Regional Water Quality Board Members this year. All of them have responded in writing to many detailed questions. Members have copies of these responses.

Since this appointee has some opposition, we have asked her to appear in person. There will be support and opposition asked for briefly, and I mean briefly.

So, if you would make a brief opening statement.

1 MS. LUTZ: Thank you very much.

2 I first want to say I'm very proud to have been
3 appointed by Governor Schwarzenegger to this wonderful board.

4 The primary goal of the Water Quality Control
5 Board is just that, water quality for all of the citizens, not
6 just in the Los Angeles region where this board has
7 jurisdiction, but for the entire state, and, since it includes
8 waters of the ocean, for world.

9 I have worked in several areas in the
10 environmental area in the past. I've worked with the California
11 Association of Governments in the Energy and Environment
12 Committee. I have also been a leader in my region, my local
13 open space issue, in which citizens banded together to vote to
14 actually pay to purchase open space in our hillsides in the City
15 of Monrovia. And then currently, I am a member of the
16 Integrated Waste Management Task Force in Los Angeles County.

17 As a member of this board, I am sitting in the
18 seat reserved for local government. And my goal as far as that
19 goes is not only to keep primary water quality, and keep our
20 water clean, but to be the bridge between the local government
21 and the municipalities and this board. My goal is to open up
22 the grounds of communication, to bring forward the issues that
23 affect both the water as well as the municipalities with regard
24 to regulation.

25 I've done this in several ways since I have
26 actually been seated -- seating on -- sat on the board for the
27 last eight months, and I hope to continue to bridge this gap
28 with both parties, to give both parties an idea of what's

1 effecting and what the concerns are. And that's primarily what
2 I'd like to do in this seat.

3 The opposition that you have with regards to me
4 is based on two issues. The first issue that has been brought
5 up is the fact that the city of which I am a council member of,
6 the City of Monrovia, has lawsuits currently pending against the
7 Water Quality Control Board. You should know that those
8 lawsuits were instituted prior to my being elected to this body,
9 and that they in no way affect my determination on any of the
10 issues based before me on this board because my responsibility
11 to the board is not just the City of Monrovia, but to the entire
12 region.

13 The other issue that was brought up is a conflict
14 of interest issue, in which they questioned my ability to vote
15 on a specific issue, namely the metals TMDL. This board -- the
16 Legislature in 2003 voted to place a member of a city council on
17 the Water Quality Control Board. That's the seat that I -- that
18 I actually hold.

19 At all times as a member of a city council, I'm
20 keenly aware of the Brown Act. I have to deal with conflict of
21 interest issues that relate to the Brown Act.

22 With this board it's a different act; it's the
23 Bagley-Keene Act. It's another act that I've learned. I've
24 learned how to work with, and I am learning still how to work
25 with.

26 I have consistently asked the counsel of the
27 board to help guide me through this. While I understand the
28 basic premise of the Bagley-Keene Act, I know that there will be

1 issues that will come up that may be some gray area, and I have
2 asked them. In this particular instance with the metals TMDL, I
3 did in fact ask the counsel whether I was eligible to place a
4 vote and hold discussion on this matter. And he emphatically
5 told me I was. In fact Mr. Michael Lofler, the attorney, also
6 put on the record prior to the hearing that day the reasons why
7 I would be able to be part of the discussion and place a vote.

8 There are several issues that will come up in my
9 tenure on this board that I will be recusing myself from,
10 primarily any issue that deals with my specific city, the City
11 of Monrovia. That has all ready happened in closed sessions,
12 when the discussion of the lawsuits in question come up. I
13 leave the room. All of the board members know why I'm leaving
14 the room. I ask specifically when is it time to leave, and I'm
15 told, "We're going to talk about it," I'm out of there.

16 Any issue that deals with the permits
17 specifically with the City of Monrovia, I know I will not be
18 part of that deliberations and the vote. And I will at any time
19 that I see a potential, confer with the counsel to get an
20 opinion from them.

21 That's really all I have to say at this point.
22 If you have any questions, I'll be more than happy to help and
23 answer them.

24 CHAIRMAN PERATA: Anyone here in opposition? Do
25 it backwards once.

26 MS. SCHAMBACH: My name is Karen Schambach. I'm
27 the California Field Director for Public Employees for
28 Environmental Responsibility. We represent scientists, wildlife

1 biologists, engineers, and law enforcement personnel who work
2 for state and federal -- state or federal government agencies,
3 primarily those that are involved in the protection of natural
4 resources and public health.

5 I was asked by some of our members to oppose this
6 nomination due to the basic conflict of interest that Ms. Lutz
7 has as a representative of the City of Monrovia and the issues
8 that come before the Water Board. And as she has all ready
9 explained, those are primarily at this point the trash TMDLs for
10 the L.A. River, which the City of Monrovia continues to actively
11 oppose, and which the Water Board, you know, is certainly in
12 favor of.

13 And then more recently, in June, there was a vote
14 on the metal TMDLs for the L.A. River which the City of Monrovia
15 also is, I understand, in opposition to, and Ms. Lutz certainly
16 had a legal -- she's right. She did, you know, request advice
17 and was told yes, she could vote on that. And she did vote
18 against those TMDLs.

19 The people that I represent just believe there's
20 a basic conflict of interest in this appointment, and that the
21 seat would better be filled by someone who has the wonderful
22 qualities and qualifications that Ms. Lutz has, but doesn't have
23 the conflict of interest.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 MS. HUNTER: Mr. Chair and Members, Yvonne
27 Hunter. I'm here today representing the Los Angeles County
28 Division of the League, which has voted to endorse this

1 nomination.

2 I think after you've heard from Ms. Lutz, you can
3 see the person of integrity she is. She is active in city
4 issues and regional issues. She will be a bridge builder.

5 And based upon what she has said and demonstrated
6 in her actions, seeking legal advice from the Regional Board's
7 counsel, there will be no conflict of interest.

8 So, the Los Angeles County Division of the League
9 is pleased to endorse her appointment.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 MR. GONSALVES: Mr. Chairman and Members, Jason
13 Gonsalves, representing the City of Bellflower, also in support
14 of this nomination.

15 But in addition to our representation of the City
16 of Bellflower, we have worked with Council Member Lutz as the
17 City of Monrovia, as a client of ours. And she has been very
18 helpful and wonderful to work with on issues relating to local
19 government. I think she'd do the same on this board.

20 We ask for your support. Thank you.

21 CHAIRMAN PERATA: Thank you.

22 MR. JOHNS: Mr. Chairman and Members, my name is
23 Craig Johns. I'm here today on behalf of the Calleguas Creek
24 Watershed Association, which is a group of cities and county
25 agencies in Ventura County, including Camarillo, Thousand Oaks,
26 Simi Valley, and a few others that have many, many interests
27 before the Regional Water Board.

28 The Calleguas Creek Watershed Association has

1 been impressed with Ms. Lutz's interest not only in water
2 quality, but balancing important environmental issues with the
3 potential costs and impacts on ratepayers and taxpayers. We
4 find this to be a refreshing start for the Regional Water Board
5 in Los Angeles, and we strongly urge the Committee's support for
6 her confirmation.

7 Thank you.

8 CHAIRMAN PERATA: Thank you.

9 Anything further?

10 You've touched on this. It seems the principle
11 concern is how you can balance the interests of the city versus
12 the Regional Board.

13 I served on the Air Quality Board in the Bay Area
14 for awhile while I was a County Supervisor, so it's not an
15 unfamiliar topic.

16 In one of your written responses, you typified
17 yourself or characterized yourself as an advocate for
18 municipalities.

19 What does that mean precisely?

20 MS. LUTZ: What it means in this instance is that
21 this board has not had a voice from the municipalities in the
22 past. And unfortunately, this board has had some I would
23 characterize adversarial relationships with municipalities.

24 I feel that being an advocate for municipalities,
25 I would be the person who would bring to light not just the
26 hard, "No, municipalities don't want to do it," but more of an
27 understanding of what they go through, and why they're
28 questioning or they need some help with certain things.

1 On the same -- the flip side of that is, one of
2 the things that I also have done is, I have attended the
3 Southern California Association of Governments Water Quality
4 Committee and spoken to them, as well as the League of
5 California Cities, Los Angeles Division, about the fact that the
6 municipalities need to really look at the situation and bind
7 together, and work as a collaborative group to try to make these
8 requirements and these regulations that need to be met for the
9 good of all.

10 So, when I say I'm an advocate, I'm an advocate
11 on both sides to really bridge the gap and to get the
12 communication going forward.

13 CHAIRMAN PERATA: Understood. Thank you.

14 Either of the Angelinos want to question?

15 SENATOR BOWEN: Just briefly to follow-up on
16 that, how do you decide when you have a situation in which your
17 city is either opposed, or so opposed that they're in
18 litigation, what's in the interests of the communities served by
19 the Regional Board, protected by the Regional Board, and your
20 city? How do you determine.

21 MS. LUTZ: If the issue comes up in something
22 that my city is already in litigation, I'm recused from that.
23 I'm not part of that decision or part of the deliberations in
24 that respect.

25 I have actually voted yes on an issue that the
26 cities, including the City of Monrovia, opposed to in my
27 tenure. In February, we -- the Board went through our goals and
28 kind of an outline of what we wanted to do for the future, and

1 one of them was to work on the issue of using numeric
2 limitations. My city opposed that. I voted yes on the goal.

3 So, there's not a black-and-white answer. Each
4 issue has to be evaluated and looked at, at each point.

5 SENATOR BOWEN: All right. Thank you.

6 CHAIRMAN PERATA: Senator Cedillo.

7 SENATOR CEDILLO: Do you or have you sought
8 counsel? I mean, on these conflicts, sometimes I don't know
9 find them to be as clear simply because on the surface or on the
10 veneer it may seem like, well, the city's involved may be
11 impacted.

12 But I'm not quite sure that that necessarily
13 constructs the conflict. So the question is, have you or do you
14 seek counsel on determining or ascertaining whether or not a
15 real conflict exists?

16 MS. LUTZ: Yes, I do.

17 If you were to speak to the counsel, which there
18 is a representative here from the Water Board, they would tell
19 you that I am probably the gnat in their hair. I frequently
20 call them, ask them, "Is this something, anything that looks
21 like it could be a potential?"

22 I do not want to jeopardize either my position to
23 make a vote, or to jeopardize the board by voting when I should
24 not be voting.

25 Also with regard to ex-parte communication, I
26 have been very diligent in speaking with counsel, and have gone
27 to great lengths to make sure that if I do meet with people on
28 ex-parte communications, that there is always a member of the

1 Water Board staff with me, and I take diligent notes. And this
2 is all per instruction of the counsel.

3 SENATOR CEDILLO: That should please the Senator.

4 CHAIRMAN PERATA: She's very pleased. I can tell
5 by looking.

6 SENATOR BOWEN: I'm in favor of gnats being
7 appointed.

8 [Laughter.]

9 SENATOR ASHBURN: As I understand it, the
10 position to which you have been appointed you referred to as the
11 local government position.

12 But in reviewing the positions allocated to this
13 board, there are nine members, and this position is referred to
14 as G-6, which specifies that it's not just a local government
15 member; it is a member of a city council or a mayor.

16 MS. LUTZ: Exactly. That was the vote in 2003
17 that made that.

18 SENATOR ASHBURN: So, is there anything unique
19 about the City of Monrovia and its relationship to this board
20 that would cause you to be disqualified or unqualified, or would
21 cause there to be a reason for your confirmation to be denied
22 simply because you're a member of this particular city council,
23 when the member who serves in this slot must be a member of a
24 city council or a mayor?

25 MS. LUTZ: In my opinion, no. If we speak to the
26 issue of the lawsuit, the City of Monrovia is a party in a
27 lawsuit that has, I believe, 30 members, 30 other cities in this
28 lawsuit. It's not --

1 SENATOR ASHBURN: Of those 30 cities, are they
2 also within the jurisdiction of this particular Regional Water
3 Quality Control Board?

4 MS. LUTZ: Yes, they are.

5 SENATOR ASHBURN: So, Monrovia, under those
6 circumstances, could hardly be called unique?

7 MS. LUTZ: Correct.

8 SENATOR ASHBURN: Is there anything about you
9 that is so unique that would disqualify you from being fair?

10 MS. LUTZ: I would say the opposite. There's
11 reasons why I'm unique, why you should want me there.

12 SENATOR ASHBURN: Thank you.

13 CHAIRMAN PERATA: You're accusing her of being
14 plain.

15 [Laughter.]

16 MS. LUTZ: I rebutted that.

17 CHAIRMAN PERATA: You did and quite well.

18 Any further questions?

19 On the close, let me just say that these jobs are
20 really, really hard to fill. I know they're very, very time
21 consuming. The issues tend to be very complicated. It's not
22 barking dogs. You'll be disputing those in Monrovia, but these
23 tend to be very difficult.

24 I think all of us appreciate what you're willing
25 to do. But I know we are all partisans to our own constituents,
26 and just urge you in your work to be mindful that this is a role
27 that is beyond the borders of the City of Monrovia, which I'm
28 sure is unique, because every city I've been to is unique.

1 I don't say that as a point of lecture at all.
2 Just that it's a thing we always worry about.

3 But that you're willing to do this and come here
4 be subjected to questions like this, I want to thank you.

5 MS. LUTZ: Well, thank you.

6 I appreciate the questions that I have been
7 brought up. I think that it's something that should be
8 discussed, and I welcome to be able to discuss them and bring
9 them out to you.

10 And your point is well taken, and I definitely
11 will keep that in mind in the future.

12 CHAIRMAN PERATA: Thank you.

13 Call the roll, please. We have a motion by
14 Senator Battin.

15 SENATOR BATTIN: Absolutely.

16 SECRETARY WEBB: Ashburn.

17 SENATOR ASHBURN: Aye.

18 SECRETARY WEBB: Ashburn Aye. Bowen.

19 SENATOR BOWEN: Aye.

20 SECRETARY WEBB: Bowen Aye. Cedillo.

21 SENATOR CEDILLO: Aye.

22 SECRETARY WEBB: Cedillo Aye. Battin.

23 SENATOR BATTIN: Aye.

24 SECRETARY WEBB: Battin Aye. Perata.

25 CHAIRMAN PERATA: Aye.

26 SECRETARY WEBB: Perata Aye. Five to zero.

27 CHAIRMAN PERATA: Thank you.

28 MS. LUTZ: Thank you very much.

1 CHAIRMAN PERATA: Our next appointee is Cynthia
2 Tuck.

3 Before we begin, I want to say that we don't
4 usually draw a crowd like this, so each side will receive 20
5 minutes, allocated, I understand, four on one side, five on the
6 other, which means five minutes to the four, and four minutes to
7 the five.

8 We have a time keeper here with a rather
9 expensive -- we spare nothing here.

10 So, what we're going to do here is make sure that
11 you say what you have to say in a pithy and direct manner. If
12 you don't use all your time, don't feel badly.

13 With that, Mr. Tamminen, welcome.

14 MR. TAMMINEN: Mr. Chair and Members of the
15 Committee, thank you very much for allowing me to appear in
16 front of you.

17 I'm Terry Tamminen, Governor Schwarzenegger's
18 Cabinet Secretary. I'm pleased today to introduce Governor
19 Schwarzenegger's appointment as Chair to the California Air
20 Resources Board, Cindy Tuck.

21 Cindy is very well qualified to head the Air
22 Resources Board. She's a professional engineer and lawyer with
23 20 years' experience on these issues.

24 She also has a solid reputation among both
25 regulators and environmentalists as a moderate who is
26 intelligent, honest, fair and willing to listen. She's been
27 effective in forging compromises that work well for business,
28 the environment, and public health. And I can tell you

1 first-hand, she's embraced the Governor's Environmental Action
2 Plan, including the defense of our landmark greenhouse gas
3 reduction law, and the Governor's recently announced targets,
4 and his goal of a 50 percent reduction in air pollution.

5 Cindy is also committed to open, transparent
6 government that serves all Californians. Her first action as
7 Chair was to hold workshops on the controversial Railroad MOU,
8 bringing all stakeholders to the table to revisit the substance
9 and the process that was used, and ensuring that future MOUs are
10 discussed and approved by the board in an open and public
11 manner. This important step, ensuring that the community is at
12 the table, demonstrates her commitment to environmental justice
13 in practice, not just lip service.

14 In closing, the Governor has picked some unusual
15 choices for various positions in this administration. I was
16 appointed to head Cal EPA, and more recently as Cabinet
17 Secretary. Dr. Lloyd was retained from the Davis administration
18 and promoted more recently to head Cal EPA. Mary Ann Warmerdam
19 came from a background in the agricultural community, and I
20 think has proven a strong leader at our Department of Pesticide
21 Regulation on enforcement and worker protection. Cindy will
22 follow in this tradition.

23 Cindy deserves the opportunity to use her skills,
24 knowledge, and integrity on the job. She deserves the chance to
25 build upon her recently demonstrated actions.

26 Please give her the opportunity to do the job, to
27 reduce air pollution in our cities and Central Valley, to
28 protect the health of our children, to combat global warming,

1 and environmental injustice, and to continue the California Air
2 Resources Board tradition of world-wide air quality and
3 technology leadership.

4 Please give her the opportunity to serve
5 California, the reason we have all joined public service in the
6 first place, regardless of our background, or, as Dr. Martin
7 Luther King, Jr. put it much more eloquently than I can, anyone
8 can be great because anyone can serve. You don't need a college
9 degree. Your verb and your subject need not agree. You only
10 need a heart full of grace.

11 I present to you that Cindy Tuck has that heart
12 full of grace to do this job. Thank you.

13 CHAIRMAN PERATA: Thank you.

14 Welcome, Ms. Tuck.

15 MS. TUCK: Thank you, Chairman Perata and
16 Members.

17 I am honored to have been appointed to this
18 position. The Air Resources Board, as you know, is
19 internationally reknown for its work in improving air quality
20 and protecting public health. Our Board excels in effective
21 program development, in sound science, and technological
22 innovation. I pledge to protect and enhance that reputation.

23 In my opening remarks today, I'd like to cover
24 four areas. The first briefly, my qualifications. Second, my
25 goals as Chair of the Air Resources Board. Third, briefly my
26 accomplishments in the last six weeks. And fourth, hitting
27 right to the issues that I think Senators are focused on, that's
28 my commitment to clean air and my independence.

1 So, going right to it first area, the
2 qualifications, I hold a Bachelor's of Science in Civil
3 Engineering from the University of Illinois. That's the top
4 civil engineering program in the nation. I hold a Master's in
5 Environmental Engineering also from the University of Illinois,
6 and that program is second only to Stanford University.

7 I hold also a license as professional engineer in
8 California that required an engineering training exam,
9 experience under the supervision of a licensed civil engineer,
10 and then I passed the Engineering License Exam for the state.

11 I also hold a Juris Doctorate degree from
12 McGeorge School of Law in Sacramento, and I'm a member of the
13 State Bar.

14 The last two qualifications I'd like to mention
15 are that I do have two decades of experience in developing
16 environmental policy, with much of that focus on air quality and
17 environmental justice.

18 Finally, I'd like to mention that I do have
19 experience in the area of water quality and hazardous materials
20 and hazardous waste. And I think that's important because as a
21 state, we become aware of the importance of looking at things
22 from a multi-media perspective. Work that we do in air can
23 impact the water, and vice-versa. So, those are qualifications.

24 Second, I'd like to move to my goals. And I did
25 include these in my answers, so I'll just hit them in a nutshell
26 format.

27 In my answers I wrote every word of those goals
28 personally, and they come from my heart.

1 The first goal is that I want to maintain and
2 enhance the Board's reputation as a leader and pace setter in
3 the effective program development, sound science, and
4 technological innovation.

5 Second, we have to maintain and enhance our work
6 in attaining the state and federal ambient air quality
7 standards. Those are the standards such as ozone and
8 particulate matter. We have to maintain and enhance the Board's
9 work on reducing toxic air contaminants.

10 Both of my parents have had cancer. This is
11 something that's important to me personally.

12 Fourth, integrating environmental justice, not
13 giving it lip service, but actually doing it, making sure we
14 integrate environmental justice into our programs.

15 Fifth, having strong enforcement. I think that,
16 you know, making sure that you have strong enforcement against
17 those who don't comply, that's -- that's the right thing to do,
18 and it's fair for those who are complying.

19 I want to work with the administration, the
20 Legislature, and all of the agencies, Secretary Lloyd, in
21 continuing California's leadership in addressing climate change.
22 I wish the federal government would be doing it. They're not,
23 so it is appropriate for California to show that leadership for
24 the country.

25 I think it's important at ARB that we have a
26 research division, that they advance research so that we have
27 good foundations for our programs. I'm a big supporter of fair
28 and meaningful public processes, and respectful communications

1 with all stakeholders, including the Legislature, most
2 important, of course.

3 CHAIRMAN PERATA: Of course.

4 MS. TUCK: I want to effectively advocate our
5 positions, our resource needs, our policy needs with Congress,
6 with U.S. EPA. Personally, I think I have the ability to help
7 do that. And I want to work in a constructive partnership with
8 the Legislature and the air districts. I think sometimes I've
9 seen in the past there's been sort of turf battles between ARB
10 and the air districts. I think we should be working together as
11 partners to get the job done.

12 Two more goals. We've got to be aware of the
13 multi-media issues and children's health issues and work hard on
14 those.

15 And last, something that's important to me
16 personally is, I want ARB to be a positive place for our
17 employees to work. Our staff is awesome. They are dedicated,
18 and they are hard working. So, those are my goals.

19 Cabinet Secretary Tamminen focused on some of the
20 things I've accomplished. Very briefly, I've been here six
21 weeks. The first thing I did was relative to the Railroad MOU.
22 I said there hasn't been a good public process here; we need to
23 have two public workshops. One of those has been held. There's
24 another one going to be held tonight in Commerce so that the
25 community can share their concerns and talk with our staff and
26 board members about the MOU.

27 I also said we need to have a hearing on this.
28 The Board needs to take action. That Board meeting will take

1 place in September.

2 The next thing I said was, the process for the
3 MOU is inappropriate. We need to fix the process for the
4 future. So at my first Board meeting, which was Day Five on the
5 job, I worked with our Executive Officer. We crafted a
6 resolution which the Board unanimously approved, saying that
7 future MOUs, there will have to be public notice of them when
8 staff starts the process. There'll have to be a public process,
9 and there will have to be Board ratification. That was
10 something I thought was the right thing to do.

11 We also as a Board, we adopted onboard diagnostic
12 requirements for heavy-duty trucks. And lastly, last week the
13 -- one of the federal agencies came out with statements in a
14 preamble saying that California did not have the authority to
15 regulate greenhouse gas emissions in vehicles. And I went on
16 the record right away, saying that their statements were not
17 binding and they were wrong.

18 So, those are some accomplishments in the time
19 that I've been here.

20 What I'd like to close with, and I appreciate
21 your patience. This is probably too long for opening remarks.

22 CHAIRMAN PERATA: No, it's fine.

23 MS. TUCK: I want to go to the two issues that I
24 think you all are focused on, and that's my commitment to clean
25 air, and can I be independent and do the right thing.

26 I'd like to start by saying, I did not pursue
27 this position to represent the business community. That would
28 be a wrong thing to do.

1 I pursued this because I'm at a point in my life
2 where it was the right thing to do was to go into public
3 service. And I thought that working on air quality issues was
4 an area where I could serve the public well.

5 Again, I would have not pursued it if I did not
6 honestly want to clean up the air and protect public health.

7 Now, some environmental groups have -- and I
8 respect their concerns, their raising concerns about can I be
9 objective because I have worked with a business and labor
10 organization.

11 And what I say today is, you have my word that I
12 will be objective, and that I will be a leader for clean air. I
13 have the cognitive ability to do so, and I have the integrity
14 and character.

15 You should know that I'm an independent thinker.
16 My mother says I'm much too independent.

17 CHAIRMAN PERATA: I'll bet she did.

18 MS. TUCK: And my mom would be here, but she's in
19 Illinois, and I think she'd have a heart attack if she was here.
20 So, I did not invite her.

21 [Laughter.]

22 MS. TUCK: But the key thing to know is, I'm
23 not --

24 CHAIRMAN PERATA: We have streaming videos.

25 [Laughter.]

26 MS. TUCK: I'll give her a tape for Christmas.

27 But the key thing to know is, I'm not beholden to
28 any outside organization. What you have before you is a person

1 who's taken the oath. I'm committed to serving the public. I
2 have solid credentials; I have a solid character, a strong work
3 ethic. I've gone into public service -- every job I've ever had
4 since I started babysitting in junior high for 25 cents an hour,
5 I have done a good job, and that's what I plan to do here.

6 Just a few last notes. I think having been an
7 effective advocate, that's a good skill for this position, and I
8 bring that to the table.

9 I also bring the ability to screen through
10 arguments that the business community may have that aren't
11 valid. I can screen through that.

12 I also have the ability to bring businesses to
13 the table. And if they're not wanting to do the right thing, I
14 can say no, and say we're not going to do that.

15 But I think most important, I have the ability.
16 I have worked for years with hours and hours of patience,
17 rolling up my sleeves with people to come to solutions. And I
18 think that's what California needs as a leader in air quality.
19 We need real effective solutions.

20 With that, I'll be glad to answer your questions.

21 CHAIRMAN PERATA: Thank you.

22 First of all, there's been no hint during the
23 entire time we've had discussions about you -- a lot of fun;
24 isn't it -- that anyone questions your sincerity or integrity.
25 That's important because all of us are politicians, and our
26 sincerity and integrity is commonly questioned.

27 [Laughter.]

28 CHAIRMAN PERATA: But I think the center point,

1 and you hit it at your close, politicians, and this is what we
2 know best, seek office, which is pretty much what you're doing,
3 but you're doing it with a much more limited constituency,
4 unfortunately. But we put forward our qualifications and our
5 resume, but ultimately, after our first election, we're going to
6 be reviewed and evaluated on our record.

7 MS. TUCK: Yes.

8 CHAIRMAN PERATA: And so, with your appointment,
9 the real question comes down to, particularly since you're an
10 at-will employee, appointee. I guess you're an employee.
11 They're going to pay you for this too; right?

12 MS. TUCK: Hopefully.

13 [Laughter.]

14 CHAIRMAN PERATA: Not a lot. It wouldn't be
15 right if you made more than the Legislature or the Governor.

16 The real question comes down to, you are a lawyer
17 and you are a lobbyist. Your advocacy in those positions were
18 for constituencies, as you've mentioned, that oftentimes are at
19 odds with what many people believe, and myself personally, that
20 are consistent and consonant with the highest air quality
21 standards in the state.

22 So, the question I have for you is, how do you
23 differentiate representing a client as a hired representative,
24 and being an advocate for the issues you personally believe in?
25 Because it seems to me that's what we're talking about here, who
26 you worked for in the past, and what you believe in, and the
27 positions you will take in the future, which, candidly, will
28 have to be different from what you've done in the past.

1 MS. TUCK: Yes. And in the past, you know, when
2 I represented CCEEB, I worked within CCEEB to bring them -- you
3 know, it's correct. CCEEB would oppose bills, and I would work
4 within CCEEB to develop amendments and work with environmental
5 groups and try to work through issues so that at the end of the
6 day, CCEEB would at least be neutral or supportive of a bill.

7 And that didn't happen in every case, but I'd
8 like to take credit for some solutions that bills went forward
9 and were signed into law that I had a positive hand in.

10 In this position, I am now a leader for air
11 quality, and the guiding principle is cleaning up the air. It's
12 not looking at the economic interests, or labor interests. It's
13 how do we clean up the air. And I have to be guided by the
14 state laws and our regulations.

15 CHAIRMAN PERATA: Well, there are two things that
16 come to mind just within the same context. And again, it's
17 really the past that casts a shadow on the present.

18 The Senate and the Assembly over the years have
19 had a very determined approach to environmental justice.

20 MS. TUCK: Yes.

21 CHAIRMAN PERATA: And it's important,
22 particularly those of us who represent inner cities, older
23 cities, cities that would like to one day come back and enjoy
24 the lives that they used to.

25 But you sat on the Cal EPA Environmental Justice
26 Advisory Committee and voted against their recommendations, even
27 those there were some industry members in support.

28 Could you recollect why that was the case?

1 MS. TUCK: Yes, I'd be glad to.

2 I attended every meeting of the committee, and
3 attended every hour and listened to every person who testified
4 and provided public comments.

5 Last night I actually went back to the Committee
6 Report and counted the number of the recommendations within the
7 report, and the number that, in representing CCEEB, I expressed
8 differences with.

9 There were 112 recommendations in the report. I
10 was neutral or supportive on 101 of them. So, I supported 90
11 percent of the document. There were just a few exceptions where
12 I did not, and what I did for those is, prepared a special
13 alternative view that clearly articulated why CCEEB had
14 differences, and put on the record that everything else in the
15 document, CCEEB was neutral or supportive of.

16 And to this day, you'll have members of the
17 committee note that, for example, I supported all the
18 enforcement recommendations, the mobile source recommendations,
19 the whole public process, on and on and on. And they'll say,
20 "We had 100 percent consensus on all of those things," and that
21 has a lot of power.

22 There were some exceptions, and I'd be glad to
23 speak to a few of those to give you examples of why CCEEB had a
24 different opinion at that time, if you'd like.

25 CHAIRMAN PERATA: Sure, give us one.

26 MS. TUCK: Okay. For example, one of the issues
27 that the committee focused on a lot was cumulative impacts,
28 because currently, for example, in air quality our programs

1 focus on one source in the neighborhood, and they regulate that
2 source. They don't really focus, at least from a toxics basis,
3 on all the sources together. So, there's a concern that we need
4 to be moving forward and regulating air toxics on a cumulative
5 basis.

6 I agree with that. CCEEB agreed with that. The
7 committee said we should come up with a definition of what is
8 cumulative impacts. I supported that recommendation. The
9 committee said we need to have good tools for assessing
10 cumulative impacts. I supported that.

11 Where there was a difference from CCEEB's
12 perspective was, the committee had some recommendations where
13 they were saying things like, there should be no new permits in
14 an area that has disproportionate cumulative impacts. There
15 should be relocation of some businesses where there's
16 disproportionate cumulative impacts.

17 What I said in the alternative opinion on behalf
18 of CCEEB was, and this was representing a business perspective,
19 that before we have recommending policies where you don't issue
20 any new permits that let that project go forward and the jobs go
21 forward, we should have a definition of what we're talking
22 about, cumulative impacts, and we should have criteria for
23 deciding where there's a cumulative impacts problem.

24 Now since that time, Cal EPA, we have an
25 inter-agency working group with the heads of different boards
26 and departments, has adopted a definition of cumulative impacts,
27 which I support.

28 And I'm very supportive of us as an agency and

1 ARB working on those policy issues of how do you decide which
2 neighborhoods have the cumulative impacts where you need to have
3 special measures in place, and then what are those measures.
4 That's something that I think, as we go forward, I want to be
5 working on.

6 But at that time, in 2003, CCEEB was not ready to
7 vote aye on a report that had those measures in it. But I
8 personally said, "101 of them; they're great."

9 CHAIRMAN PERATA: Let's go a contemporary
10 situation now. The Governor's commitment is to reduce air
11 pollution by 50 percent by the year 2010. And your response was
12 unequivocal in your commitment to achieving that goal.

13 Can you discuss just briefly what kinds of
14 regulations you see that would need to be enacted? Or what
15 kinds of things that you envision advocating to reach those
16 standards?

17 MS. TUCK: Those goals. And certainly, that is n
18 challenging goal.

19 One fact I put in my response is, just on ozone,
20 going from .36 parts per million ozone to .18, which is our peak
21 level now, that took 20 years. So, you know, a lot of regs and
22 expense to get there.

23 So now we're looking at the next increment. In
24 my answer, I tried to address not just ozone but particulate
25 matter and toxics. Where we are today, the Air Board and the
26 air districts will pass the easy measures. And we need to be
27 looking at all types of sources make sure that they do their
28 fair part, including agriculture, which is now part of the

1 permitting program.

2 We also need to be focused on emission sources
3 that are growing. And one of the ones that I know many of you
4 are aware of are the goods movement emissions, with ships coming
5 into the ports, with the growth in China, et cetera. The truck
6 emissions associated with goods movement, and railroad emissions
7 associated with goods movement. That's an area where the
8 Governor, Cabinet Secretary Tamminen, Secretary Lloyd and I, we
9 are all very committed to working on the issue of emissions
10 associated with goods movement.

11 And that, I noted in the answer, we've got to
12 work. At ARB, we have a part. The districts have a part. But
13 we have got to get the federal government more engaged and
14 providing more money on those issues, because a lot of the
15 emissions now are coming from federally pre-empted sources and
16 the ships which come from other countries. So, we've got some
17 huge challenges.

18 The solution's going to be a mix of new regs and,
19 hopefully, and incentive packages, and work -- cooperative work
20 with the federal government.

21 CHAIRMAN PERATA: Members? Senator Ashburn.

22 SENATOR ASHBURN: I want to wait until after the
23 testimony.

24 CHAIRMAN PERATA: All right.

25 We will now ask -- you can stay there -- we have
26 those four persons in support.

27 Doctor, welcome.

28 DR. LLOYD: Yes, Mr. Chair and Members, thank you

1 for the opportunity to come before you today in support of Cindy
2 Tuck's appointment as Chairman of the Air Resources Board. I'm
3 Alan Lloyd, Secretary of Cal EPA. Before Governor
4 Schwarzenegger appointed me as Secretary of Cal EPA, I had the
5 honor of serving as Chairman of the Air Resources Board under
6 both Governors Davis and Schwarzenegger.

7 It's also my pleasure -- it was also my pleasure
8 to serve on the board with outstanding colleagues, including
9 Barbara Riordan, who is here today to support Cindy's
10 appointment.

11 As someone who has served under two governors, I
12 have profound respect for the process by which gubernatorial
13 appointees are selected and confirmed. The role of this body
14 and the Senate at large in the confirmation process is part of
15 maintaining the balance of power in state government.

16 I'm proud of the Air Resources Board's
17 accomplishments in leading the nation and the world in improving
18 air quality and in protecting public health. The Board's
19 enjoyed unprecedented bipartisan and public support as we
20 tackled the difficult yet critical issue of air quality, public
21 health, and economic vitality.

22 I can assure you that Cindy Tuck will continue
23 the tradition, if given the opportunity. You heard Cindy is a
24 person of impeccable integrity and comes to the job with
25 substantial knowledge of issues facing the Board.

26 As members of the Board, Barbara and I have been
27 impressed with Cindy's work ethic and her commitment to bring
28 people together toward common solutions. She has all ready

1 indicated to you her work on environmental justice, and I was
2 there when we, in fact, passed the landmark Board's policy on
3 environmental justice, and subsequent on the handbook and
4 complaint resolution protocol.

5 Cindy is fully committed to the Governor's
6 ambitious air quality agenda, as you heard, including cleaning
7 up pollution by 50 percent. She serves as a member of the
8 Climate Action Team, and as Chairman of the Air Resources Board
9 will play a critical role in developing effective solutions to
10 meet the Governor's greenhouse gas targets.

11 As a professional who has spent my career dealing
12 with these important issues, I strongly encourage the Members of
13 the Senate to give Cindy the opportunity to prove herself as
14 Chair.

15 I had privilege of representing Governor Davis
16 and the people of California as Air Resources Board Chairman.
17 After the recall, Governor Schwarzenegger did not exercise his
18 legitimate prerogative to remove me as Chair. He gave me the
19 chance to demonstrate that I could carry out the goals of his
20 administration.

21 I only ask that the Senate extend the same
22 courtesy that the Governor showed me, a chance to demonstrate
23 that Cindy Tuck can continue a strong and critical role of
24 Chairwoman of the Air Resources Board.

25 Now let me introduce Barbara Riordan, a former
26 colleague of mine, who has served on the Board since 1991 with
27 great distinction for both Republican and Democratic
28 administrations, twice as Acting Chair.

1 Thank you.

2 CHAIRMAN PERATA: Thank you, Doctor.

3 MS. RIORDAN: Thank you, Dr. Lloyd, and good
4 afternoon, Mr. Chairman and Members.

5 My name is Barbara Riordan, and I'm here to
6 enthusiastically support the confirmation of Cindy Tuck as Chair
7 of the Air Resources Board.

8 During my tenure, I have on many occasions
9 witnessed Cindy's testimony before our board. And let me tell
10 you, she's well organized, she's on point, and she is always
11 thoughtful in her comments.

12 She is does, indeed, have I think the appropriate
13 attitude and demeanor to be a Chair of the Air Resources Board.

14 Her interests in environmental justice are
15 evident in her support of the many projects that we have dealt
16 with in the last few years under Dr. Lloyd's leadership, and
17 especially the new land-use document.

18 And Mr. Chairman, as a Supervisor, you will
19 appreciate this.

20 This is a document that the Air Resources Board
21 has passed and given approval to that a number of people like
22 Ms. Tuck have been involved with and a number of stakeholders.
23 It is to advise people in local government who have land-use
24 decisions to make, the information that they need in order to
25 better protect the health of the members of their community. In
26 other words, in the siting of new projects, that they will know
27 that you keep housing away from serious toxic land use projects,
28 that you use buffers, a whole wide range of information which is

1 most important to local officials in protecting the public
2 health of their constituents.

3 I have also, and I want to emphasize, appreciated
4 her leadership just in these few six weeks that she's been here
5 in office. Her efforts to show the leadership that's needed to
6 make possible the public hearings that were spoken of by the
7 first two speakers so that people will have an opportunity to
8 comment fully, to understand fully what the Air Resources Board
9 did on the MOUs for the railroads, and to finally hold the
10 public hearing.

11 The first two workshops, they're more information
12 meetings than workshops, are being held in our communities.
13 They're during hours were working people can come. They're held
14 in the afternoon and the evenings. And our final hearing will
15 be in the Los Angeles area. It will be, again, in the late
16 afternoon and evening so people who are working members of the
17 community can come, can comment, and hear the testimony that is
18 given.

19 Since taking the position, I believe Cindy has
20 exercised very good leadership in this regard.

21 Mr. Chairman, our goal at the ARB is to attain
22 clean air for all Californians. And I am Cindy Tuck is the
23 person to lead our effort.

24 Thank you for your attention.

25 CHAIRMAN PERATA: Thank you.

26 MS. ROSS: Good afternoon. My name is Karen
27 Ross, and I'm President of the California Association of
28 Winegrape Growers.

1 The organization supports Cindy, but I'm here
2 today as someone who's been one of her best friends for 16
3 years. So, I'd like to fill in a little bit of the gaps that
4 perhaps would help you understand better the kind of person that
5 Cindy is, and why I know that she will do exactly what she
6 pledged to do to you just a few minutes ago.

7 In my previous career, I worked with Cindy for
8 about 10 years on farming issues. And so, I am testament to how
9 thorough she is, that when there's a meeting, she's going to be
10 the best-prepared person in the room because she does a matrix
11 for everything, and she has critical pathways identified.

12 She's thorough. She's detail-minded. She has
13 the technical expertise which I always admired. But what was
14 especially important about that is not just that she understood
15 the details and could put things together, but she always kept
16 the big-picture policy goals and objectives in mind.

17 And that's really important. Sometimes we can
18 fall into the details and forget what the real objectives are,
19 what the real goals are, and how we can produce solutions to get
20 there. That's one of the best talents she has.

21 I remember about 10 years ago, when she said she
22 wanted to go to law school at night time because she was working
23 full time, and you need to know that a full-time job for Cindy
24 is a minimum 50 to 60 hours a week.

25 She went to law school, and she wanted to make
26 sure that not one of the members of any of the associations that
27 she represented would ever be less served because she happened
28 to be studying for an exam.

1 She barely took time off for pneumonia, and
2 that's only because my husband and I bugged her and nagged her,
3 and took her the groceries. She took the weekend off, and maybe
4 she missed one night of classes, but that was it. This woman
5 doesn't do anything -- if she makes a commitment, she makes the
6 commitment because she intends to fulfill that commitment.

7 I think that her role as an advocate is actually
8 an asset here because it's given her insight. Over 20 years of
9 negotiating and being in the room with all the details, and
10 looking at how we built the body of law that we have and the
11 regulations that we have to really provide Californians clean
12 air and a better environment.

13 She would not take this job and make the
14 commitment to fulfill the Governor's pledge for cleaning up the
15 air if she couldn't do it or didn't believe that she could do
16 it. Scientifically, she knows, it's a stretch. But her
17 personal integrity, her willingness to listen to others and
18 really hear what they have to say, her respect for different
19 points of view, and bringing everyone to the table is
20 unparalleled. And she will give that to the people of
21 California.

22 And I'm really proud of her that she's going to
23 do this. I hope that you will give her the chance to prove
24 herself. Thank you.

25 CHAIRMAN PERATA: Thank you.

26 MR. BROAD: Mr. Chairman and Members, Barry
27 Broad. I'm here today on behalf of the Teamsters and the
28 Machinists Union.

1 Our support for the confirmation of Ms. Tuck
2 doesn't come from me. It came directly from my leaders, who
3 have worked with her in CCEEB, particularly Chuck Mack, who's
4 probably one of the most progressive labor leaders in the
5 state.

6 I think you've heard today about Cindy's
7 commitment, reputation, intelligence, integrity. I think that's
8 beyond debate. I don't think anybody's raised that as a problem
9 here.

10 I will say, as someone who's been around this
11 town for a long time, she has a tremendous reputation for
12 honesty and integrity just around the Capitol. And she is a
13 thoroughly decent person.

14 She deserves a chance to prove herself in this
15 position.

16 I'll make one prediction. Based on my
17 experience, knowing her, knowing the business community, knowing
18 the environmental community here, the business community has a
19 lot more to fear from her than the environmental community,
20 because frankly, Cindy knows where the bodies are buried. No
21 one's going to pass any line of baloney on her about how the
22 business community is going to suffer for this or for that
23 because we're trying to attain clean air goals in this state.
24 And I think she's going to look them in the eye and she's going
25 to say, "No way. We're doing what we need to do."

26 CHAIRMAN PERATA: You're making some people
27 nervous, Barry.

28 [Laughter.]

1 MR. BROAD: Some of them have privately said they
2 are nervous, frankly.

3 But anyway, the fact of the matter is, I think
4 Cindy deserves your vote. I think she deserves a chance to
5 prove what kind of a leader she will be in air quality, and we
6 urge her confirmation.

7 Thank you.

8 CHAIRMAN PERATA: Thank you.

9 MS. WITTENBERG: Mr. Chairman, Senators, my name
10 is Diane Wittenberg, and I'm the President of the California
11 Climate Action Registry. I'm also a board member of the
12 Coalition for Clean Air. However, I speak personally here today
13 and not on behalf of either organization.

14 I do want to expand on Cindy's earlier comments
15 and her remarks regarding bills that went forward that she had a
16 positive hand in. That's my experience with her.

17 The California Climate Action Registry is a
18 nonprofit that helps organizations inventory, certify, and
19 report their greenhouse gas emissions, which are the gases which
20 cause global warming. The Registry was established through
21 state statute, and the state stands behind the data we collect.

22 Participation is voluntary, though once you agree
23 to inventory your greenhouse gases, the process is rigorous and
24 includes following strict measurement protocols, having third
25 party certification, and public reporting of emissions.

26 Currently 55 organizations participate in the Registry, and we
27 capture about 12 percent of the nonresidential greenhouse gases
28 emitted in the state.

1 In 2001, I helped develop consensus language for
2 SB 527, which was the clean-up bill following the original
3 legislation creating the Climate Registry. A diverse group
4 consisting of government, business, environmental, and other
5 interested participants worked together to craft the bill's
6 language.

7 The bill that was ultimately developed and which
8 became the law was strong, prescriptive, and detailed. There
9 was dissension in the stakeholder group as the language was
10 developed and strong difference over several issues, such as the
11 scope of reporting, the standards of disclosure, and the process
12 of verifying data.

13 Through this stakeholder process, I got to know
14 Cindy personally and found her to be very reasonable. She
15 worked creatively and doggedly to make sure that we came up with
16 good solutions for everyone. When there was no immediate
17 agreement on a thorny issue, Cindy often suggested creative
18 alternatives and helped build consensus around a viable
19 solution. She listened to others and built bridges between
20 differing points of view.

21 To a large part due to her participation and
22 cooperation, the stakeholder group was able to take a consensus
23 view supporting SB 527, which gave the Registry environmental
24 integrity and insisted on high quality data.

25 Since then, I've worked with Ms. Tuck several
26 other times, and they've reinforced to me her qualities of
27 honesty and straight talk, knowledge of technical issues,
28 persistence, and strength.

1 During the period when she was being considered
2 to be appointed the Chair of the ARB but had the not yet been
3 chosen by the Governor, she and I spoke at some length of her
4 readiness and her desire to become a professional environmental
5 champion. I believe she wants to leave a legacy of important
6 environmental work and leadership, and I ask this committee to
7 give her the opportunity to do so.

8 Thank you very much.

9 CHAIRMAN PERATA: Thank you.

10 Those who would like to identify themselves in
11 support, just your name and such use. Use that microphone right
12 there.

13 MR. GUALCO: Mr. Chair and Members, Jack Gualco
14 on behalf of the California Council for Environmental Economic
15 Balance, the California Association of Pest Control Advisors,
16 Imperial Irrigation District, and Modesto Irrigation District in
17 support of Ms. Tuck's nomination.

18 MR. LIVINGSTON: Mr. Chairman and Members of the
19 Committee, Gene Livingston.

20 I've known Cindy Tuck for over a dozen years,
21 since before she even went to law school.

22 She gave you her word that she would be
23 independent and committed, and that's something you can take to
24 the bank. We support her confirmation.

25 MR. PAWLICKI: Mr. Chairman and Members, Mark
26 Pawlicki for the California Forestry Association in support.

27 MR. DI MARE: Mr. Chairman and Members, Dominic
28 Di Mare with the California Chamber of Commerce.

1 We support Ms. Tuck in this confirmation because
2 she has all the personal and professional characteristics that
3 we all should aspire to have. We think she will do an excellent
4 job in her role.

5 CHAIRMAN PERATA: I'd like just to ask people for
6 their name and organization, please.

7 MR. MANNING: Mr. Chairman and Members, Ed
8 Manning on behalf of the Rubber Manufacturers Association in
9 support.

10 MR. FALASCO: Mike Falasco, Wine Institute. We
11 support Cindy.

12 MR. McKEEMAN: Mr. Chairman, Jay McKeeman on
13 behalf of the 400 members of the California Independent Oil
14 Marketers Association in support.

15 MS. PINEL: Renee Pinel on behalf of the Western
16 Plant Health Association in support.

17 MR. GOMES: George Gomes on behalf of the
18 California Farm Bureau Federation in support.

19 MR. BROWN: Mr. Chairman and Members of the
20 Committee, Louie Brown on behalf of the California Grocers
21 Association, California Citrus Mutual, the California Cotton
22 Growers and Ginners Association, Nisei Farmers League, and the
23 California Grape and Tree Fruit League, in support.

24 MR. LUCAS: Bob Lucas on behalf of the Carrier
25 Corporation and its parent United Technologies.

26 MR. BISHOP: K.C. Bishop for Chevron Corporation
27 in support.

28 MR. GORDON: Don Gordon, Agricultural Council of

1 California in support.

2 MR. HEGLAND: Bill Hegland, Chemical Industry
3 Council of California.

4 MS. STOUDER: Anna-Marie Stouder on behalf of the
5 California Restaurant Association in support.

6 MR. NEENAN: Rob Neenan with the California
7 League of Food Processors in support.

8 MS. CATZEN-BROWN: Meg Catzen-Brown on behalf of
9 California Water Service Company in support.

10 MS. FERNANDEZ: Soyla Fernandez, representing
11 Southern California Edison in support.

12 MR. DESMOND: Jerry Desmond, Jr., on behalf 125
13 members of the Metal Finishing Association of Southern
14 California, in support.

15 MR. DUNN: Keith Dunn for the Consulting
16 Engineers and Land Surveyors of California, in support.

17 MR. PUGLIA: Dave Puglia for Western Growers in
18 support.

19 MR. MORIYAMA: Cliff Moriyama, California
20 Business Properties Association, in support.

21 MR. COYLE: Mr. Chairman and Members, Tim Coyle,
22 California Building Industry Association, in support.

23 MS. MATTOS: Deborah Mattos, on behalf of Lumber
24 Association of California and Nevada, and Evergreen Holdings, an
25 environmental company, in support.

26 MR. ASSAGAI: Mel Assagai for International
27 Trucking and Engine, in support.

28 MS. BRUCE: Margaret Bruce from the Silicon

1 Valley Leadership Group in support.

2 MR. ZIERMAN: Rock Zierman, California
3 Independent Petroleum Association, in support.

4 MR. ULRICH: John Ulrich for Applied Process
5 Technologies in support.

6 MR. STEWART: Jack Stewart, California
7 Manufacturers and Technologies Association, in support.

8 MR. GLADFELTY: Mr. Chairman and Members, Paul
9 Gladfelty, representing the Associated General Contractors, S.C.
10 Johnson, and Caterpillar, in support.

11 MR. McHUGH: Gavin McHugh, on behalf of the State
12 of California Auto Dismantlers Association. We're in support.

13 MR. McGAW: Good afternoon. Peter McGaw, on
14 behalf of the Contra Costa Council in support.

15 MR. KRAUSS: Bill Krauss, representing the
16 California Mining Association, in support.

17 MR. JOHNS: Craig Johns on behalf of the
18 Partnership for Sound Science and Environmental Policy in
19 support.

20 MR. EDGAR: Sean Edgar, on behalf of the Clean
21 Fleets Coalition, in support.

22 CHAIRMAN PERATA: Thank you all.

23 Now we'll hear from the opposition. Would you
24 like to start.

25 MS. HOLMES-GEN: My name is Bonnie Holmes-Gen.
26 I'm the Assistant Vice President for Government Relations for
27 the American Lung Association of California.

28 And the American Lung Association of California

1 is urging you today-to oppose the confirmation of Ms. Tuck as
2 Chair of the California Air Resources Board.

3 We are taking this position after careful thought
4 and reflection on the long-standing reputation and the role of
5 the Air Board as the cutting edge air quality agency in the
6 country and the guardian of public health, and after
7 consideration of the career and lobbying records of the nominee,
8 Ms. Tuck.

9 Several months ago, we sat here before you in
10 support of Dr. Alan Lloyd, most recently the Chair of the ARB at
11 that time, and newly appointed to head Cal EPA. When Dr. Lloyd
12 was first appointed to Chair the State Air Board, he was already
13 a distinguished public servant and atmospheric scientist who had
14 worked many years for the South Coast Air Quality Management
15 District.

16 Well, Dr. Lloyd was appointed by Governor Davis;
17 he was re-appointed by Governor Schwarzenegger and serves as a
18 good example of a 40-year bipartisan tradition of appointing
19 individuals with significant professional achievement and track
20 record in public health for this important post.

21 Regrettably, we believe that Ms. Tuck's
22 nomination represents a departure from this bipartisan
23 tradition.

24 As the premiere air agency in California and the
25 world, the State Air Resources Board has proudly set the
26 standard for innovative technologies, excellence in research,
27 and tough air quality regulations that push technologies
28 forward.

1 Despite the hard work of the Board, Californians
2 still breathe the worst air in the country and suffer high
3 numbers of asthma attacks, hospital and emergency room visits,
4 cases of chronic bronchitis, and other lung illnesses, and
5 premature death, all linked to pollution. The State Board's own
6 estimate is that 90 percent of Californians live in areas with
7 poor air quality. Premature deaths from air pollution are now
8 at levels comparable to deaths from traffic accidents and
9 second-hand smoke, with lives shortened an average of 14 years.

10 Our children are especially at risk from asthma
11 attacks, elevated cancer risk from breathing diesel fumes, and
12 the damaging effects of pollution on lungs that are still
13 growing and developing.

14 Given these challenges, the candidate for the Air
15 Resources Board Chair should have a track record that exhibits a
16 strong commitment and concern for public health. Unfortunately,
17 Ms. Tuck's career as a lobbyist on behalf of some of the largest
18 industries in California exhibits the opposite. Ms. Tuck and
19 the organizations for whom she has lobbied have consistently
20 opposed good air quality legislation on the basis of cost to
21 industry.

22 Given this history, we simply do not have a basis
23 to trust that Ms. Tuck will make public health the number one
24 priority. For example, Ms. Tuck's organization opposed Escutia,
25 and after that bill was vetoed, the next version of the bill, SB
26 25, Escutia, the Children's Environmental Health Protection Act.
27 SB 25 is a very simple and vital bill that requires state
28 agencies to take children's health into account when

1 establishing air quality standards and air toxic control
2 measures.

3 Only when it become evident that SB 25 was going
4 to become law did industry groups remove their opposition. If
5 SB 25 had not become law, the state would not have moved forward
6 to adopt landmark new particulate -- state particulate and ozone
7 standards in 2003 and 2005. The state would not have begun
8 special air monitoring studies at schools where children spend
9 so much of their time, and California would not have new
10 resources and staff devoted to children's health at the State
11 Air Board and other agencies.

12 Ms. Tuck and her clients also opposed Senator
13 Sher's SB 288, to protect California's New Source Review
14 Program, a vital air quality program that requires industries to
15 install new control technologies during modernization and
16 expansion to reduce pollution emissions. This was a program
17 that has been undercut through weakening regulatory changes at
18 the federal level.

19 If Ms. Tuck is confirmed, continuing
20 implementation of SB 25 and SB 288 would be placed under the
21 authority of the lobbyist who worked on those bills.

22 The bottom line is that extraordinary leadership
23 is needed to address our air quality challenges. The public
24 health crisis generated by poor air quality, the deadlines
25 looming for achievement of state and federal health-based
26 standards, and the challenge of getting additional pollution
27 reductions in time to avoid federal sanctions will be extremely
28 difficult to address. California needs a State Air Board Chair

1 who can make tough decisions and hold industry accountable, and
2 who will give the highest priority to the agenda of public
3 health protection.

4 Ms. Tuck is a very knowledgeable person and a
5 person of integrity. Nobody questions that. It is her track
6 record that has not led us to believe that she can exhibit the
7 kind of leadership that is needed at this time at the State Air
8 Resources Board.

9 CHAIRMAN PERATA: Thank you.

10 MS. GERBER: Mr. Chairman, Members of the
11 Committee, my name is Donna Gerber, and I am the Government
12 Relations Director for the California Nurses Association,
13 representing 65,000 registered nurses in California.

14 We are here to oppose the confirmation of
15 Governor Arnold Schwarzenegger's appointment of Cynthia Tuck to
16 the California Air Resources Board. And while we have several
17 things that we disagree with the Governor on that are well
18 known, and while we even, perhaps, do not agree with all of his
19 appointments, I would point out that this is the first time that
20 we have appeared to oppose an appointment by the Governor
21 because we think that this is simply the wrong person and the
22 wrong position.

23 It is unprecedented to have an industry lobbyist
24 chair a state regulatory board charged with the regulation of
25 industry. The fox should never guard the chickens, and we would
26 all be foolish to expect that that would work.

27 Everyday, nurses in California see the face of
28 the results of California's air pollution, where respiratory and

1 cardiac disease is rampant, and you've heard more of the
2 specifics on that. They know that Californians need more
3 aggressive public health advocacy from CARB.

4 To us, the appointment of a corporate industry
5 advocate to what should be a pre-eminent public health agency as
6 well as an environmental agency, is not defensible. Ms. Tuck
7 has a track record in opposing better standards. In addition,
8 she has opposed recognition of the need to protect children as
9 well as environmental justice for communities most impacted.
10 This is not a person without a record.

11 Her main problem, nice person, obviously, she
12 chose who she wanted to be an advocate for. As a former
13 supervisor in Contra Costa County, with four refineries and the
14 second highest volume of hazardous materials in the State of
15 California, second only to Los Angeles, I saw first-hand the
16 power of industry on these issues. And I assure you that the
17 Legislature and the State of California need a Chair of CARB
18 that will not just reverse their past 20 years of action, but
19 that will have been somebody who is an, advocate because it will
20 take both strength, intelligence, technical expertise, and
21 advocacy.

22 I can also assure you, as somebody who happened
23 to have been appointed to the California Medical Board by a
24 former governor, that we bring with us our experience to these
25 positions. We bring with us our values, values that we've
26 chosen usually before we get to these appointed positions. And
27 it makes a difference in how hard somebody is willing to fight,
28 especially when we're talking about probably the conglomeration

1 of the most powerful industries, or certainly way up there with
2 the most powerful industries, not only in this state but in this
3 country.

4 Thank you very much for your attention.

5 CHAIRMAN PERATA: Thank you.

6 MS. ARGUELLO: Good afternoon. My name is
7 Martha Arguello. I'm the Director of Health and Environment
8 Programs for Physicians for Social Responsibility, and I serve
9 as an alternate on the Cal EPA Environmental Justice Advisory
10 Committee.

11 Our organization is led by the motto of
12 physicians: First do no harm.

13 With more than 33 million Californians living in
14 areas with elevated respiratory and cancer risk, there can be no
15 dispute that California air poses a significant threat to the
16 health of Californians. Basically these threats will require
17 vision and leadership.

18 And acknowledging that to implement the mission
19 of the California Air Resources Board, we must have a leader
20 with a proven track record and willingness to take precautionary
21 action to protect public health. Not one who, on September
22 20th, 2003 -- I'm sorry, it's September 30th -- was the only
23 dissenting vote against approving landmark environmental justice
24 policies developed by the Cal EPA Advisory Committee.

25 When the cost of a hospital stay for asthma
26 amounted to 480 million in California, when one hospital stay
27 can cost \$13,000, and 10 percent of California's children under
28 age of 18 have been diagnosed with asthma, it's time for

1 leadership that we can trust based on their public record and
2 not as an industry lobbyist. Someone with a track record that
3 consistently has forced compromises that benefit industry and
4 hurt public health and the environment is not the right choice
5 to hold the public trust given to the Chair of the Air Resources
6 Board.

7 We need someone at the Air Resources Board that
8 has a demonstrated record of protecting public health. We need
9 a track record of someone defending the most vulnerable and not
10 the most powerful.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MS. WILLIAMS: Senator Perata, Members of the
14 Committee, good afternoon.

15 I'm Jane Williams.

16 Hi, Cindy. How are you?

17 MS. TUCK: Hi, Jane.

18 MS. WILLIAMS: I spent a lot of time with
19 Ms. Tuck, a great deal of time.

20 I'm the Executive Director of California
21 Communities Against Toxics. It's my pleasure to be here before
22 you today to testify in the confirmation of Ms. Tuck as the
23 nominee to the Air Resources Board.

24 For those of you who aren't familiar with my
25 organization, it is a coalition of over 70 environmental justice
26 groups.

27 Let me tell you a little bit about how we were
28 formed. In 1989, there was a march against a proposed hazardous

1 waste incinerator in Vernon. During that march, many members of
2 the environmental justice leaders from across the state came
3 together. They decided they would form a statewide network
4 because there were many decisions that were being made in
5 Sacramento and in agencies across the state that affected
6 environmental justice communities. This is one of those
7 decisions.

8 They formed this network to better be able to
9 participate in these decisions. And we've circulated a letter
10 with a number of my members on it opposing this confirmation.

11 The work of this environmental justice network is
12 based on a few fundamental principles of environmental justice.
13 One, that communities have a right to know about pollution and
14 the impacts of pollution in their communities; that communities
15 and individuals have a right to participate fully in decisions
16 that effect their health and well being; that communities of
17 color and low income communities should not bear
18 disproportionate burdens from pollution or polluting industries;
19 that when the absolute safety of chemical releases are
20 uncertain, every caution should be taken, every caution
21 available should be taken, to preserve or restore the health and
22 well being of communities; and that no rights or privileges that
23 are afforded to other communities should be denied to
24 environmental justice communities.

25 As an aside, you may be interested to know why I
26 am the Director of this organization. The community I grew up
27 in is a small rural community of farmworkers, housewives,
28 military workers near Edwards Air Force Base, where the Space

1 Shuttle lands. We were home to a Union Carbide plant. It
2 spewed tons of pollution into the surrounding communities.

3 When I grew up, the plant was five miles away.
4 Many mornings I could wake up and smell the fumes and the smoke.
5 Many of the children I went to school with had respiratory
6 problems. My younger brother had asthma.

7 Our next door neighbor, Omar Wilson, was 10 when
8 he was diagnosed with Hodgkin's Disease. At that time, he was
9 the youngest case in the entire country. He went to Stanford
10 Medical Center to get treated. My grandmother, who lived just
11 down the street, would help take care of him when he was well
12 enough to have visitors and leave the hospital.

13 But let me get back to the principles. These
14 principles are very fundamental to the work our organization has
15 done over the last five years, advocating for more public
16 participation in agency decision making.

17 They're also crucial to our work advocating for
18 the use of the precautionary principle and multi-media
19 cumulative impacts assessments. These are three things that are
20 very important to the environmental justice movement in
21 California and where some of the key recommendations of CJAC.

22 We have struggled to get more accurate emissions
23 inventories from the air districts and from the Air Resources
24 Board on the emissions from both large sources of pollution,
25 such as refineries, and smaller sources, such as chrome platers,
26 drycleaners, and auto body shops, which emit toxic chemicals
27 into school yards and homes.

28 Ms. Tuck has opposed updating emissions

1 inventories repeatedly, saying that the self-reported data from
2 industry is accurate, and that health risk assessments derived
3 from that data indicate little or no risks to residences or
4 schools near major sources of air pollution.

5 We've struggled to expand the rights of
6 communities to participate in decision making on individual
7 permits issued in their communities. Ms. Tuck has repeatedly
8 argued that the current permitting structure is adequate, and
9 has argued in some forums that the current permitting structure
10 is too onerous for industry and should be streamlined.

11 We've advocated for more stringent enforcement
12 policies in EJ communities, including increasing the fines for
13 pollution. Currently the average fine for an air violation is
14 only \$2,000, hardly enough to deter major sources of pollution
15 from violations. Indeed, 50 percent of facilities which
16 violate air pollution laws are repeat violators.

17 The organization Ms. Tuck lobbied for prior to
18 her appointment as ARB Chair opposes legislation that would
19 establish mandatory minimal penalties for violators, and
20 legislation that would be -- that would subject knowing and
21 willful tampering of air pollution control and monitoring
22 equipment to criminal penalties. That's SB 109, Deborah Ortiz.

23 Many of these large polluting facilities are
24 located in environmental justice communities. In fact, if you
25 live in California, and you are a person of color or poor, you
26 are more than twice as likely to live next to one of these
27 facilities.

28 After Omar came back from the hospital, I found

1 out that more children in my town in were sick. Many had the
2 same kind of cancer, medulla blastoma, a brain cancer so rare
3 that you would never expect to see one case in my town. Only
4 2,000 people live there. Jimmy Sanchez, age 5, Dora Little, age
5 7, Jose Rico, age 9 all contracted brain cancer.

6 Ms. Tuck served on the Air Resources Board
7 Environmental Justice Stakeholder Group with me for many years.
8 She was a consistent advocate for industry. She opposed any
9 meaningful from of precaution. In fact, it was because of her
10 advocacy that the words "precautionary principle" do not appear
11 in the documents produced by the ARB's Environmental Justice
12 Stakeholder Group, or the Cal EPA Advisory Committee on
13 Environmental Justice.

14 We spent a great deal of time on the committee
15 arguing about whether action should be taken to reduce
16 pollution if the technology were available to do so, but in the
17 absence of risk. Ms. Tuck argued vehemently that before any
18 action should be taken to reduce pollution from an industry
19 source, absolute proof of harm would need to be demonstrated.

20 Proof of harm. Where is the proof of harm when
21 for many of the chemicals released into the air we do not even
22 have the laboratory methods to find them? This argument did not
23 deter her. Proof of harm, when we cannot explain why there is a
24 doubling of the rates of autism every five years, and the
25 children living near major sources of pollution exhibit much
26 higher rates of respiratory disease, and when tens of thousands
27 of deaths per year are now attributed to air pollution in the
28 state.

1 Lori Jimenez, age 11, loved to play basketball.
2 Ron Decart, age 10, liked to draw animals and was very good at
3 it. Cheryl Jones, age 14, loved to babysit the twins next door.
4 All were diagnosed with brain cancer.

5 Ms. Tuck is knowledgeable. She knows the Clean
6 Air Act. She understands air regulations. She's familiar with
7 the workings of the air districts and the Air Resources Board.
8 She's serious about her job, punctual, prepared for meetings, a
9 good writer. She has many of the qualities that you would want
10 to lead an agency or run a corporation.

11 Timmy Dunn, age 11, just started the basketball
12 season when he was diagnosed. Sochi Diaz, age 5, kindergarten
13 ABC whiz kid, could count to 300 without stopping.

14 What the environmental justice movement knows is
15 that the cost -- that pollution has a cost, and it is not the
16 cost of a selective catalytic reduction unit, or carbon
17 injection, or electrostatic precipitator. It is the lives of
18 our youth and elders, those most vulnerable among us.

19 If we are not going to stand up and protect the
20 rights of our children to play soccer without grasping for their
21 inhalers, then we have failed as a society.

22 The environmental justice movement believes that
23 basic, inalienable rights were granted to us by both the Creator
24 and the Constitution, and that one of these rights is the right
25 to a clean environment.

26 It's because of all these things we urge you not
27 to confirm Ms. Tuck as the Chair of the Air Resources Board.

28 Tory Wilson, age 2, just started to say her first

1 words. Still clinging to her mother's skirt.

2 All but one of these children died. And if you
3 went to the communities of any one of my members, you would hear
4 similar stories of families who have been devastated by the
5 death of a child attributed to a polluting facility nearby.

6 I thank you for your kind attention and your
7 service.

8 CHAIRMAN PERATA: You have 55 seconds, sir.

9 MR. CARMICHAEL: I'll make it brief.

10 My name is Tim Carmichael. I'm the President and
11 CEO of the Coalition for Clean Air.

12 Imagine if you knew nothing of Ms. Tuck, and all
13 you had before you was the mission of the Air Resources Board
14 and the people that just testified in support of her, and the
15 environmental, air quality, environmental justice, and public
16 health advocates that are united in opposition to her.

17 You had every major polluter in the state support
18 this confirmation, and every major public health, environmental,
19 air quality advocate opposed. You had nothing else than that
20 information and the Air Resources Board's mission.

21 That is what it comes down to. That is based --
22 is representative of Ms. Tuck's record on these issues.

23 For all the reputation references that people
24 have made -- integrity, honesty, et cetera -- nobody, nobody
25 today has said that this person has a reputation for being an
26 advocate, a strong advocate for clean air. Nobody has testified
27 to that.

28 If we are truly in a crisis, and I believe that

1 relative to air pollution, we need that extraordinary leadership
2 at the Air Resources Board in a position that every Californian
3 holds as a position of public trust, that they are counting on
4 to protect their public health.

5 Last closing comment. The Governor breeched that
6 public trust with this appointment, and we are asking the Senate
7 to restore it by opposing this confirmation.

8 Thank you.

9 CHAIRMAN PERATA: Thank you.

10 Anyone else interested in registering opposition?
11 Please come to the microphone and give your name and
12 organizational affiliation, if any.

13 MS. JAHAGIRDAR: Sujatha Jahagirdar, on behalf
14 of Environment California and our 80,000 members, in opposition.

15 MS. WILLIAMS: LaDonna Williams, People for
16 Children's Health and Environmental Justice.

17 With this appointee, we won't have children in
18 the next decade.

19 MS. ACEY: My name is Yoshiko Acey. I'm a member
20 of Stop the Expansion in Suisun City. I am with the people:
21 Cynthia Valdick of Del Amor Action Committee; Roland Ballantine,
22 Desert Citizens Against Pollution; Alicia Dean, Environmental
23 Justice Coalition for Water in Oakland.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 MR. MAGAVERN: Bill Magavern on behalf of 200,000
27 Sierra Club members in California.

28 MS. CAIN: Jean Cain, Citizens Against the Dump

1 Expansion. I'm also Jim Stewart, Earth Day; Bill Walker,
2 Environmental Work Group; John Mataka, Greystone Neighborhood
3 Council; Bradley Angel, Action for Health and Environmental
4 justice.

5 We oppose the appointment of Ms. Tuck. Thank you.

6 MR. CAIN: Hi. I'm Brian Cain. I am a member of
7 the Suisun Citizens Against the Dump. I am also opposed to it,
8 as well as representing Vivian Parker for California Indian
9 Basket Weavers Association; David Chatfield, Californians for
10 Pesticide Reform; Robina Suell, California Safe Schools; and
11 Luke Kohl, Center on Race, Poverty and the Environment.

12 MR. WHITE: Mr. Chairman and Members, John White,
13 Member of the Board of the League of Conservation Voters, in
14 opposition.

15 MS. NOTTHOFF: Ann Notthoff, California Advocacy
16 Director for the Natural Resources Defense Council, in
17 opposition.

18 MS. SMARTT: Susan Smartt, California League of
19 Conservation Voters, in opposition.

20 MR. WELCH: Mr. Chair and Members, Virgil Welch,
21 on behalf of Planning and Conservation League, in opposition.

22 MR. LOW: Stephen Low, representing Communities
23 for a Better Environment.

24 California's low-income communities of color
25 receive the highest amounts of industrial pollution. Confirming
26 Cindy Tuck tells these communities and the rest of California
27 that their health is expendable. CB opposes Cindy Tuck's
28 confirmation.

1 CHAIRMAN PERATA: Thank you.

2 MS. ANDOLINA: Tina Andolina. I'm with the
3 Coalition for Clean Air. But also I'm the mother of two small
4 boys.

5 I urge you to oppose this confirmation. Thank
6 you.

7 MR. MARQUEZ: Jesse Marquez, Executive Director,
8 Coalition for a Safe Environment, located in the South Bay, in
9 the Port of L.A.-Port of Long Beach areas.

10 I'd like to submit two photos to you showing two
11 refineries, of which Cindy Tuck took no position to protect the
12 public. One shows a major flare that traveled over 10 miles and
13 passed through five communities.

14 The other one just occurred last Monday, where
15 she was present. And if she wanted to show her leadership, she
16 should have dialed that 800 toll-free number to the AQMD, like
17 we in the community had to do to report the incident, and she
18 did not.

19 The second action she could have did was come
20 back to Sacramento, ordered her staff to investigate that
21 incident. She did not.

22 But it was we, the public having to protect our
23 children, that had to make those calls and require the
24 investigation.

25 I thank you.

26 CHAIRMAN PERATA: Thank you.

27 Members? Senator Cedillo? Senator Battin?

28 SENATOR BATTIN: Thank you, Mr. Chairman.

1 Let me just start off with a comment.

2 It concerns me that we as a committee and as a
3 body of the Senate are setting a precedent here which is
4 contrary to the workings of the Senate. Which is, we are not
5 really giving Ms. Tuck the opportunity to show the public and us
6 what she will do.

7 Typically it is a tradition of the Senate to take
8 an appointee and allow them to spend 365 days, or close to 365
9 days, in their job to understand how they're going to handle the
10 job of which they have been appointed. I mean, we know this
11 because every sheet that we have as Committee Member always has
12 that 365th day on it, and we want to make sure that we get them
13 confirmed or deal with them before that year is up.

14 That is not what we're doing with Ms. Tuck, and I
15 don't understand it.

16 Two things that we should be mindful of as a
17 body. Number one, we are making subjective opinions about
18 someone whose actions we haven't seen. The gentleman from the
19 Clean Air Coalition said, well, what if you didn't know anything
20 about her? We don't. We don't know anything about her as the
21 role that she has been given through the Governor.

22 We do have the ability as the Senate, next year,
23 to have an informed decision, to say we have made the decision
24 to confirm you or not to confirm you based on what you have done
25 in your role for the last year, just like we have done for every
26 single other appointee that we have dealt with on this
27 Committee.

28 That's number one. It is a disturbing change of

1 Senate policy and practice.

2 But secondly, let's look at it about what message
3 it sends to potential appointees. If you are and really have
4 been a pillar of your community in your career, if you are
5 someone who has caught the eye of this Governor or, frankly, any
6 governor, and asked to serve in his administration, and you give
7 up your job to do it, knowing that the Senate could very well
8 likely let you be in your job for six weeks and then act to
9 confirm or not confirm you, you're going to look twice at
10 accepting that appointment in the first place, because you are,
11 you know, at the pinnacle of your career that you'd ever get the
12 nomination in the first place.

13 And we're going to find it very hard to find
14 quality people. It's not fair to the process to do this, and
15 it's not fair to the appointees to do this.

16 Our system does not run like the federal
17 government system. And we're distinguished because we allow
18 people to show us what they've got. I, for one, should think
19 that we should continue to do that.

20 Now, I believe that it would only be right and
21 proper if we allowed Ms. Tuck the opportunity to serve her time,
22 and then take up this confirmation, albeit on the Floor or even
23 in this Committee, next year, around the 340th day, just like we
24 have done with everybody else.

25 CHAIRMAN PERATA: Senator Ashburn.

26 SENATOR ASHBURN: Thank you, Mr. President.

27 Most of the criticism, most of the commentary,
28 has to do with your role with this organization, CCEEB.

1 I heard no one say that you were not intelligent,
2 that you didn't have the educational background, that you didn't
3 have the commitment to public service.

4 And if there's anyone in the room who would like
5 to disagree with my observation, raise your hand, but I didn't
6 hear any objections to those issues.

7 The issue seemed to be your relationship with
8 this organization CCEEB.

9 And so, I want to know what this organization is;
10 who the members are, not specifically by name, but in terms of
11 the representation; and then the decision-making process within
12 the organization that would cause you to have come forward to
13 the Legislature or to the Air Resources Board, or other state
14 agencies, on behalf of this organization.

15 MS. TUCK: Okay.

16 CCEEB is the California Council for Environmental
17 and Economic Balance. It's an organization that came out of a
18 suggestion by then-former Governor Brown, Senior. And it's a
19 coalition that's based of business, organized labor, and public
20 leaders. And their focus is working on environmental issues
21 with the goal that you should be able to protect the environment
22 and have a strong economy at the same time.

23 CCEEB has a Board of Directors. They have --

24 SENATOR ASHBURN: How many members on that Board
25 of Directors?

26 MS. TUCK: I believe it's 60.

27 SENATOR ASHBURN: Sixty?

28 MS. TUCK: Six-oh, approximately, with one-third

1 business, one-third labor, one-third public leaders.

2 There's also a committee structure, and each
3 committee has a chair or a manager that leads that. And they
4 have different issue areas, and the committees take positions on
5 issues.

6 SENATOR ASHBURN: The decision-making process,
7 describe further for me your role with that organization:
8 60-member Board of Directors; one-third from business, one-third
9 from labor, one-third public interest.

10 So, what was your relationship in terms of the
11 organizational structure?

12 MS. TUCK: Sure.

13 I had probably three different roles. I served
14 as General Counsel for the organization, so I provided their
15 legal guidance for the board specifically and for the
16 President.

17 I also Chaired a State Air Quality Committee,
18 which took positions on stationary source issues. There's
19 another committee that worked on mobile source issues, hazardous
20 materials issues, et cetera.

21 And I also led, chaired, a committee that worked
22 on Bay Area air quality issues. In that role, I would run
23 meetings, try to hear the concerns of members, and we would take
24 positions. Our President, Dick Wiser, was the leader also at
25 those meetings, and we would then take the position to the
26 Capitol on behalf of the organization.

27 SENATOR ASHBURN: My point would be that you,
28 Cindy Tuck, are not CCEEB.

1 MS. TUCK: Right.

2 SENATOR ASHBURN: That you were a representative
3 of the organization. You were General Counsel to the
4 organization, but that it has a large and diverse membership.
5 And that it has an organizational structure with a Board of
6 Directors, and a committee structure, and a decision-making
7 process.

8 MS. TUCK: Yes. I was, you know, representing a
9 client. I was on staff, but as a lawyer I was representing a
10 client.

11 SENATOR ASHBURN: It was characterized by the
12 representative of the California Nurses Association that you
13 were an industry lobbyist. And then she went further to
14 describe you another time as a corporate industry lobbyist.

15 Is that an accurate description? It doesn't
16 sound like an accurate description of what CCEEB is.

17 MS. TUCK: Well, the last five years, I was a
18 principal at the organization. I was at number two level.

19 I was a registered lobbyist. I could have de-
20 registered. I never met the threshold for, you know, having to
21 be registered the last several years, but I for some reason kept
22 that, I guess to be in the book.

23 But I was a principal in the organization.

24 SENATOR ASHBURN: The statement was made by
25 another of those who testified against you that you consistently
26 opposed clean air measures, consistently opposed.

27 How would anyone come up with that
28 characterization of the positions that you took?

1 MS. TUCK: I think, you know, what they're saying
2 is that CCEEB takes positions on bills. Sometimes they're an
3 opposition position; sometimes it's a support position.

4 CCEEB, I think those of you who are familiar with
5 CCEEB know it's not a right-wing organization by any means.
6 CCEEB doesn't just oppose bills, support bills. They look at
7 the merits.

8 I think usually they're in support of the goal of
9 the bill.

10 But as I think everybody who's associated with
11 Legislature knows, often the first version of a bill isn't
12 perfect, needs some work, needs input. And CCEEB is a group
13 that will write amendments, offer suggestions, that kind of
14 thing.

15 So, you know, they do take positions.

16 As far as -- I think at the end of the day, CCEEB
17 is probably the group that's more often in support when the bill
18 is finished or neutral. I know when I was there, for example,
19 under the Davis administration -- and Linda Adams would have
20 been here to speak to this today, but she's on vacation in
21 Alaska -- I was the person that she relied on as Legislative
22 Affairs Secretary for Governor Davis to get bills worked out, to
23 get one business organization in support of measures, and I
24 worked to do that, worked very hard. Went beyond what I was
25 really, you know, required to do, but I thought it was the right
26 thing to do.

27 SENATOR ASHBURN: So, I'm interpreting from that
28 answer that you do not agree with the characterization that you

1 are an industry lobbyist, or that the organization was an
2 industry front group. And that the organization, you
3 personally, consistently opposed clean air measures in our
4 state?

5 MS. TUCK: Well, you know, I want to be clear.
6 CCEEB has business members, and they're part of the
7 organization.

8 But I think the positions that CCEEB was taking,
9 they were honestly trying to protect the environment. If it was
10 an air quality bill, you know, for example, supporting the
11 California Clean Air Act. On environmental justice, the first
12 organization to support the environmental justice program, and
13 that was key for that going forward under Governor Davis.

14 So, I think they had some good goals and worked
15 out the details of bills.

16 SENATOR ASHBURN: The statement was made to us
17 that you worked against permitting requirements, that you worked
18 against the release of emissions data.

19 MS. TUCK: Yeah. One thing I would like to
20 correct for the record.

21 I don't believe I have ever opposed having better
22 emission inventories. That is something that I think is
23 critical. If we're going to have effective air quality
24 programs, whether we're talking about cars, stationary sources,
25 ozone, particulate matter, cows -- now we're focused on
26 regulating cows -- we need to have good emission inventories.
27 If you don't, that's the foundation for the solution. If you
28 don't have the right information, you're not going to solve the

1 problem.

2 So, I've never opposed updating or improving
3 emission inventories.

4 There's one other thing I'd like to, if it's okay
5 at this point, go on the record. One other thing that stood out
6 to me was that I'm opposed to precaution.

7 And I certainly support the -- Cal EPA earlier
8 this year adopted a definition of precautionary approach, which
9 I fully support, you know, which is the concept that you don't
10 wait until you have perfect science to regulate. And that's --
11 you know, at ARB, when we have credible, reasonable information
12 we're acting. And the degree of the action you take depends on
13 how much information you have and the degree of harm.

14 But taking precautionary approach is the basis of
15 the whole, you know, Cal EPA's environmental laws and regs.

16 SENATOR ASHBURN: No one disagreed with my
17 characterization that there was a lack of testimony in
18 opposition to your education, your experience, your dedication,
19 your honesty, your integrity, your capability to do the job.

20 We've established that CCEEB is not a corporate
21 industry organization. That you did not, nor did CCEEB,
22 consistently oppose clean air measures. That you do not agree
23 that you worked against permitting measures. That you did not
24 try to stall or to deter the release of emissions data.

25 MS. TUCK: And I really didn't speak to the
26 permitting issue. Maybe I should speak to that.

27 You know, permits are a key foundation of our air
28 quality program. The air districts implement the permits at the

1 regional and local level.

2 It's important to have strong permitting
3 requirements. And, you know, hopefully the programs can be
4 efficient as possible so that the new jobs that come out of
5 projects can go forward, but you need to have a strong
6 permitting program.

7 And to the extent that there are things that need
8 to be looked at in the current permitting program, I'm open to
9 that going forward.

10 SENATOR ASHBURN: So, you're in favor of
11 permitting?

12 MS. TUCK: It's part of state law. It's illegal
13 to, generally, to operate without a permit in California as far
14 as air pollution goes.

15 SENATOR ASHBURN: So, if you go through the
16 litany that I just tried to describe of the testimony that we've
17 had, and all the information that's been presented to us, no
18 doubt about your qualifications; no doubt about your dedication;
19 no doubt about your ability to do this job; mischaracterization
20 of CCEEB; mischaracterization of your role in consistently
21 opposing clean air measures; that this is not some corporate
22 front group; and that on the permitting issue and on the data
23 issue, and on the precautionary issue, you've not been contrary
24 to the interests of the health of Californians.

25 So why are people against you?

26 MS. TUCK: Well, I think from the environmental
27 organizations, what they have told me is -- and some of them who
28 know me better said, "We'd like to have the faith in you, but,

1 you know, we can't tell what's in your heart. You have come
2 from an organization that has business as members. You've
3 represented their positions. We don't know if we can trust you
4 to do the job. We like you as a person. You're honest, those
5 things, but we don't know if you're the right candidate for this
6 position."

7 And some have said --

8 SENATOR ASHBURN: Do you believe that CCEEB is on
9 trial here?

10 MS. TUCK: No. I think I'm before the Committee.
11 I don't think this should be about CCEEB.

12 SENATOR ASHBURN: No one questions your
13 background, experience, dedication or ability.

14 MS. TUCK: Well, I think it's fair for groups to
15 ask questions about my past. That's appropriate.

16 What I'm hoping, though, is that Committee look
17 at my qualifications, my competence, my good will, and that I'm
18 here to do a good job, and that I hope I have a chance to show
19 that I will do that.

20 SENATOR ASHBURN: One other comment,
21 Mr. President.

22 With all due respect to Alan Lloyd, your
23 predecessor, you're a woman.

24 MS. TUCK: Yes, I am.

25 [Laughter.]

26 CHAIRMAN PERATA: We got that cleared up.

27 SENATOR ASHBURN: And Governor Schwarzenegger
28 deserves recognition for the outstanding women that he has

1 nominated to positions of leadership in California, and you are
2 one of them.

3 And I've seen women come before this Committee
4 for confirmation who are having a difficult time.

5 For those who want to advocate that we break the
6 glass ceiling, and that we advance women, you know, we've had
7 some outstanding women nominated by this Governor, and you're
8 one of them.

9 Thank you.

10 CHAIRMAN PERATA: Senator Bowen.

11 SENATOR BOWEN: Well, let it be said that women
12 should have as difficult a time as men being confirmed or
13 elected, just not a more difficult time.

14 And I think neither Ms. Tuck nor I would want to
15 be treated differently because of our gender.

16 MS. TUCK: I fully concur with that.

17 SENATOR BOWEN: Thank you.

18 Let me for a moment address the issue of timing.
19 It is not the case that the Committee routinely allows, or that
20 the Rules Committee and the Senate routinely allows nominees a
21 particular amount of time. In fact, we confirmed Dr. Lloyd
22 almost immediately upon his appointment. We very recently
23 expedited the confirmation of the Secretary of State, Bruce
24 McPherson because of the urgency involved in filling the
25 position.

26 Also, I think it's important to understand that
27 with regard to this particular appointment, the Governor was
28 informed several months ago, and long before the appointment was

1 made, that there would be objections to the appointment. So, no
2 one is taken by surprise, and it is not the policy of the
3 Committee to give everyone a trial period. In fact, some people
4 never come before the Committee for confirmation. They simply
5 expire, metaphorically.

6 MS. TUCK: Yes.

7 [Laughter.]

8 SENATOR BOWEN: You know, I've represented a
9 district that has five oil refineries, a major airport, adjacent
10 to the two major Los Angeles County ports, has a lot of light
11 industries, sewage treatment facilities.

12 And it also has a big increase in kids with
13 asthma, a health care crisis, concerned about access to
14 emergency rooms. The cost of one ambulance trip to an emergency
15 room for asthma is, at this time, at least \$1,000 for someone
16 who doesn't have health insurance.

17 So, I look at this as a question of how to best
18 allocate the costs associated with achieving clean air and
19 health benefits, because there are going to be costs to the
20 industry if you do things one way, to polluters. There'll be
21 costs, personal costs in terms of health care, costs to the
22 emergency health care system that affect all of us. If the
23 ambulances are busy with kids with asthma, that's a problem for
24 all of us.

25 So, it's not a question of whether there's going
26 to be costs to try to change this or not.

27 I want to go to some specific questions, because
28 we really haven't dealt with your responses, your answers, at

1 all. There were some questions that arose.

2 First, with regard to the State Implementation
3 Plan. As I understand it, the plan as it is written does not
4 account for a Supreme Court ruling in 2004 that under NAFTA, an
5 environmental assessment of the impacts of implementing the
6 transportation provisions of that agreement is not necessary.

7 As a result, we're likely to have on the order of
8 35,000 heavy-duty commercial vehicles crossing into the United
9 States from Mexico everyday, with California getting some 25 to
10 40 percent of that traffic.

11 We do know that the Mexican truck fleet is
12 considerably older, and the estimate I have -- I think it's from
13 the Legislative Analyst's Office -- is that we are likely to see
14 an increase due to that truck traffic of 50 tons of NOx
15 emissions on an annual basis.

16 The attachment that you have provided with regard
17 to this SIP, and the 2003 measures and the expected reductions,
18 has total of 109 tons per day, this is per day, of ROGs and
19 NOxs.

20 How are you going to deal with the fact that that
21 SIP now is, if 50 tons is right, about half of it needs to be
22 done over again, or you need to find another 50 tons per day of
23 savings or reductions in emissions?

24 MS. TUCK: The SIP process, which is the State
25 Implementation Process, it's how we get to the federal
26 standards, in this case focused on ozone, it's not a one-time
27 process. It's a continuing process, as you probably know, with
28 updates.

1 The measures that we have here are under the 2003
2 version for the South Coast Air Quality Management District.
3 There will be new updated SIP, a version of the SIP, for
4 2007-2008 for ozone and particulate matter.

5 When -- and there'll be a public process that'll
6 start in 2006 to develop that.

7 When an updated SIP is developed, there has to
8 be -- look at what the current emission inventory is, the
9 forecasting. We have to come up with what is the right emission
10 target going into that plan.

11 And I think part of the concern we have since
12 I've been here in a short time, I've already started to see
13 information on the goods movement, trucks on 99 in the Bay Area,
14 particular focus on Long Beach and Los Angeles Ports. And
15 there's no question that that part of the inventory is
16 increasing.

17 We have other parts that we've been getting a
18 handle on, but that part is increasing. So trucks, particularly
19 old, dirtier trucks, we have got to get a handle on that.

20 SENATOR BOWEN: How can you? It's a NAFTA issue.

21 MS. TUCK: That's -- that's a very good question.
22 And I think, you know, for sources that are regulated that are
23 in the country, there are some cases where we don't have
24 authority, or there's pre-emption, that kind of thing. We can
25 work with EPA.

26 But when it's an international source, those
27 are -- those are very challenging issues. And I know I had one
28 meeting with Senator Ducheny, where she faces those issues all

1 the time with the transport of pollutants into the San Diego-
2 Imperial area.

3 Those are hard issues. I can't say right here
4 before you I have the answer to that, but that's something that
5 I would like to work on.

6 SENATOR BOWEN: I would make the assumption that
7 there's a certain amount of that that you aren't going to be
8 able to affect, and that you're going to have to find reductions
9 to replace those, that enormous increase in emissions, somewhere
10 else.

11 Do you disagree with that?

12 MS. TUCK: We have to work expeditiously to
13 attain the federal and the state standards. So, if we can't get
14 the emission reductions from somewhere else, we've got to still
15 work to get to the standards because the standards are set at a
16 level to protect public health.

17 Obviously, the fairest way is to be able to have
18 requirements that get at all the sources. But if there's a
19 source that we can't get at, then, you know, I think the answer
20 is, other sources are going to have to make up the difference.

21 But to the extent we can somehow work with other
22 governments, in this case Mexico, we need to do that.

23 SENATOR BOWEN: I'm concerned that you won't
24 begin process of updating the SIP until -- you won't even begin
25 the process until 2006.

26 Under ordinary circumstances, that's probably
27 adequate. But given this 2004 Supreme Court decision, and the
28 magnitude of the likely increase that just basically makes all

1 the baselines wrong for where we are, because you're going to
2 have 50 tons a day --

3 MS. TUCK: Which is a large number.

4 SENATOR BOWEN: It's half, almost half of what
5 the expected reductions are on Attachment One that you provided
6 to us.

7 MS. TUCK: I -- I understand that.

8 I think since I've been on staff, I've seen -- or
9 at ARB, Chairing the Board, seeing the information on goods
10 movement, there the plan is to come up with -- and we haven't
11 released the Goods Movement Action Plan yet. There'll be a
12 first part of it that will be released soon. Part of the plan
13 under there is to have an emission reduction strategy focused on
14 goods movement. And that -- you know, we're hoping to work on
15 that and get that out by -- you know, as soon as possible.

16 But that focus is ahead of the SIP planning
17 process. We're not waiting till 2006 SIP process to start that
18 effort. This is work that's starting now, and we'll be heavily
19 engaged in 2006.

20 SENATOR BOWEN: Let's turn to another particular
21 aspect of the goods movement question, something that was
22 alluded to, and it has to do with the Memorandum of
23 Understanding with the railroads.

24 MS. TUCK: Yes.

25 SENATOR BOWEN: I understand that you inherited
26 that.

27 I'm not sure that I understand your answer when
28 it says that going into the September 22 Board Meeting, the

1 Board will be addressing what is a strong tension between
2 obtaining real enforceable emissions reductions, and having a
3 fair and meaningful public process.

4 Would you explain why that's a tension?

5 MS. TUCK: Well, there are some folks, and I am,
6 as I said in the answer, and this is a very -- I go to these
7 issues, looking at them factually, intellectually, but I also
8 look at things from the heart.

9 And, you know, you look at this, and there are
10 some comments that we've heard, and we'll hear more comments in
11 -- throughout the process that this MOU was developed, and there
12 wasn't a public process. Regardless of -- you know, it may be
13 great, but if you didn't have a public process, should the
14 document go forward?

15 So, they're raising that issue, some folks are.
16 And I think that's a good question that we need to evaluate.

17 But then there's other folks who say, wait a
18 minute; this is a source that's largely federally pre-empted;
19 these are emissions; we've got to get the tons -- and this is a
20 source we need to regulate. This MOU does regulate them. It's
21 a voluntary agreement. So, we should, you know, endorse it and
22 have it stay intact.

23 So, there's this balance of do you protect the
24 air quality benefit that the MOU has in the contract form, or do
25 you let the railroads walk away from that based on folks who
26 have a concern about public process.

27 And there's other folks who say, well, we would
28 rather run legislation and the risk of litigation by the

1 railroads, and lose that or win that, than have the MOU, which
2 we didn't have a chance to participate in.

3 So, what I'm trying to do is hear from everyone,
4 understand their concerns. And when I go to the Board as one
5 member of the Board and the Chair in September, weigh those
6 factors. And obviously, what the Board has to do is make the
7 right decision for clean air, but we do need to have -- you
8 know, we need to factor in the public's concerns.

9 SENATOR BOWEN: What is your perspective on what
10 is pre-empted?

11 And I ask that because one of the things that's
12 in the MOU is a pre-emption of any state or local standard
13 that's tougher than what's in it. And if there truly is federal
14 pre-emption, that would seem to be superfluous. If Senator
15 Burton were here, he'd probably say "superfluidity vitiates."
16 It's one of the canons of juris prudence.

17 Why is that there if we have federal pre-emption?

18 MS. TUCK: Okay, and I'm going to answer this
19 carefully, because I'm speaking as Chair of the Air Resources
20 Board. If my counsel was here, he would want me to speak very
21 carefully on that point.

22 My understanding is that federal law pre-empts
23 certain state regulation of -- let me back up -- pre-empts state
24 regulation of certain railroad activities. Not every activity,
25 but strong pre-emption over many activities.

26 I want to be -- you know me. I like to be
27 precise and answer, but I do not want to overstate our
28 authority, and I certainly do not want to understate our

1 thought.

2 So, but there -- it's definitely the case that we
3 have a problem with federal pre-emption. And so, having a
4 voluntary agreement is one way where we can effectively get
5 emission reductions from the railroads. And that's why we're
6 going into this hearing, looking at things very carefully.

7 SENATOR BOWEN: Do you view imposing an impact
8 mitigation fee, as Senator Romero's SB 459 sought to do this
9 year as a regulation of railroad emissions that would be
10 pre-empted?

11 MS. TUCK: I have not analyzed that issue.
12 That's certainly something that I would be -- you know, we can
13 look at, and I would be glad to discuss that with you.

14 That's obviously a key issue. And going forward
15 and regulating or trying to get emission reductions for goods
16 movement, and trying to get money to fund emissions efforts for
17 goods movement, that's something that should be looked at.

18 I don't know answer to that question, and because
19 of the importance of that question, again, I want to be accurate
20 when I answer it.

21 SENATOR BOWEN: Wouldn't the pre-emption clause
22 in the MOU prohibit the state from doing anything like that?

23 MS. TUCK: There is a release clause in the MOU,
24 and the way it's set up is that if another, for example, an air
25 district adopts a regulation that covers the same area, the
26 railroads, it's -- they can walk from that part of the MOU or
27 not, but it's specific to the different, you know, if it's on
28 anti-idling, or if it's on fuel, or whatever the provision is of

1 the MOU. The lease clause, it's not covering the whole
2 agreement. It's specific to what the element is in question.

3 SENATOR BOWEN: How will the MOU be enforced? As
4 a voluntary agreement, what's the enforcement mechanism?

5 MS. TUCK: It operates as a contract, and there
6 are specific penalty provisions in the MOU. And my
7 understanding is that our enforcement division would be over
8 that.

9 SENATOR BOWEN: So, the Air Board would be the
10 enforcement agency?

11 MS. TUCK: That's my understanding. I haven't
12 focused on the enforcement side of it, but that's -- I believe
13 that would be right.

14 SENATOR BOWEN: One of the ongoing questions that
15 we've had, and it's actually been a bigger issue with the water
16 board, one of the water boards than the Air Board, is what
17 happens when you have a history of violations and there's no
18 action taken?

19 There's some allegations, and I'm sorry to get
20 back to cows, but there is a dairy in the Central Valley that's
21 spent a lot of time violating certain water standards, and
22 basically there's been almost no enforcement action.

23 So, how do we ensure that the MOU will be
24 enforced?

25 MS. TUCK: Well, we believe in strong enforcement
26 at the Air Resources Board. General Riden is the head of our
27 Division of Enforcement. And we're committed, you know, if
28 people aren't complying with the law, there will be enforcement.

1 SENATOR BOWEN: Let me go back for a moment to
2 the little discussion that we had, brief discussion, about
3 environmental justice.

4 It's my understanding, and Dr. Lloyd referenced
5 this, but it's my understanding that there was a vote on a
6 variety of measures, and that there was then a vote on the Final
7 Report. Is that correct?

8 MS. TUCK: The committee, we had many meetings.
9 We worked under Roberts Rules of Order, and we basically went
10 paragraph by paragraph through the document, typically, and had
11 votes on the language, paragraph by paragraph, is how we
12 operated.

13 SENATOR BOWEN: But it's my understanding at the
14 end of that there was a vote on the report as a whole?

15 MS. TUCK: That's correct.

16 SENATOR BOWEN: It's my understanding that you
17 voted No on the report as a whole.

18 MS. TUCK: That is correct. That was as
19 representing CCEEB. And again, as I mentioned earlier, I
20 supported or was neutral on 101 out of 112 recommendations.

21 SENATOR BOWEN: On the numbers, it's a statistic.
22 There are lot of things you could vote Aye on. I don't know how
23 many you voted Aye on and how many you were neutral on.

24 But it's the few significant things, the things
25 that are really tough, and in particular the environmental
26 impacts issues, and the cumulative issues coming from a district
27 that has been so heavily impacted by port operations, and oil
28 refineries.

1 I think it would be hard to create any definition
2 of cumulative impacts that doesn't include, for example,
3 Wilmington.

4 MS. TUCK: Right, absolutely.

5 And I just went, as I noted in my responses, just
6 went on a tour of Wilmington and of the Port at Los Angeles.
7 And I also went the Friday before on a tour of Commerce and saw
8 the railroad yards and the neighborhood that's right --
9 surrounded by the railroad yards and the 710.

10 I had not been on the one of the toxics tours
11 before. And one of the -- the gentleman who's on the Cal EPA EJ
12 Advisory Committee, I had told him whether I was appointed or
13 not appointed, I wanted to go on the toxics tour.

14 And frankly either the Friday afternoon and the
15 Monday all-day session were eye-opening for me to see, you know,
16 the home with the railroad yard right behind the backyard, and
17 the 710 right there. And I think I have a much more real
18 appreciation of cumulative impacts than I did before.

19 I also went to an elementary school near LAX and,
20 you know, saw the planes going right over the kids, and learned
21 about a community agreement that had been formed there, and I
22 think that's an interesting model that we could be supportive of
23 and be a helpful player in.

24 CHAIRMAN PERATA: I hate to break up the rhythm
25 here, but it occurred to me just now that I'm getting weary
26 listening, and you're typing. So, we're going to give you a
27 break.

28 We'll take a ten-minute break so the stenographer

1 doesn't die.

2 [Thereupon a brief recess
3 was taken.]

4 CHAIRMAN PERATA: We will reconvene and pick up
5 from where we left off.

6 Senator Bowen.

7 SENATOR BOWEN: Thank you.

8 Close to the end, I promise.

9 Actually during the break it occurred to me that
10 the conversation that Mr. Ashburn had had with you about CCEEB
11 that there's one thing that I didn't find out, which is where
12 the funding comes from to run the organization?

13 MS. TUCK: Yes.

14 The funding comes from the members. So, there
15 are businesses paying dues, and there are organized labor
16 organizations paying dues.

17 SENATOR BOWEN: What's the breakdown as between
18 corporate members, business members, and labor members?

19 MS. TUCK: My recollection at CCEEB, members pay
20 a general dues, and then they pay committee dues.

21 And the general dues do vary. I would say that
22 the organized labor dues can be lower than what the businesses
23 do pay.

24 And for committees, it's a -- the same rate
25 applies if you're organized labor or business.

26 SENATOR BOWEN: All right.

27 I'm sure there are a lot of substantive issues
28 that we could go into. But I think at this point, for me, it's

1 time to turn to the issue that I've struggled with the most.

2 Like Senator Perata, like many others, I have no
3 question about your capability, your integrity, all of those
4 things.

5 But I also practiced law. You do, in your work
6 life, whether you're a lawyer or a consultant, get to choose
7 what you work on in these kinds of professional situations.

8 And I'm probably colored by having had the
9 experience as a young lawyer being assigned to work on an
10 airline bankruptcy case in which I was asked to figure out a way
11 to loot the employee plan to help Frank Lorenzo. And it
12 ultimately led to my leaving the practice of law for a period of
13 time until I could figure out how I could have some control over
14 what I did.

15 You obviously had a long and, I think, very
16 successful career representing organizations that oppose many of
17 the laws that you will now be required to enforce as the Chair
18 of the Air Resources Board. The greenhouse gas emissions bill
19 is just one of those.

20 And it is just difficult for me to reconcile that
21 background with the history of appointments to this position
22 that are historically what I would call noncombatants, or
23 apologists, scientists, regulators, people who haven't had a 17
24 or 18-year history of representing a particular point of view,
25 and of working through the legislative process and through the
26 regulatory process to keep certain things from going into the
27 law, to keep stronger regulations from becoming part of
28 California law, part of our regulations.

1 So, I really need your response to that, because
2 it is my most difficult problem with this.

3 MS. TUCK: Okay. And I'd like to answer that
4 with probably a few different components.

5 When I started going back to college and
6 undergrad, I would have not gone into environmental engineering
7 if I did not want to clean up the environment. And I'd always
8 liked math, I liked science, so I went into environmental
9 engineering.

10 My first job out of school, which sort of got me
11 started down a path, was as a civil engineer for Pacific Gas and
12 Electric Company. In that job, part of my responsibility was
13 compliance projects. And I frankly think, having worked as a
14 person in a company that was responsible for some compliance
15 activities, that's an asset to this position. I know how -- you
16 know, what you have to do to provide training manuals and
17 compliance manuals, and what it takes to comply; what people can
18 do, what they can't do; what works, what doesn't work, that kind
19 of thing. I think that's an asset.

20 In the past year, serving as an advocate then as
21 General Counsel and as a principal in representing an
22 organization, certainly I did represent CCEEB positions. But as
23 an individual, I worked -- I went beyond what I was required to
24 do to find solutions. There were countless issues that I worked
25 on where I put my personal, you know, heart into it, hours and
26 hours and hours, that I was not asked to do for my job, because
27 I thought finding the solution was the right thing to do.

28 In the resume that I provided to the Committee, I

1 provided the Committee with some examples on that. And, you
2 know, so I think when I was in the business sector, I played a
3 moderating force, hopefully a progressive force, to bring things
4 along.

5 But in the last couple years I have -- I found
6 myself more and more defending Cal EPA, defending ARB and their
7 programs. And really at some point was getting frustrated, and
8 I wanted -- this is a bit of a different tact, but it's the
9 right tact, and I think I can do a great job in this position.
10 That's why I pursued it.

11 I'm normally a modest person, but I've learned in
12 this process that you don't -- you know, you need to hold back
13 on the modesty.

14 CHAIRMAN PERATA: Definitely the wrong building.

15 [Laughter.]

16 SENATOR BOWEN: Well, no, I think that would be
17 an issue in the other Chamber, but over here --

18 [Laughter.]

19 SENATOR BOWEN: There certainly are many
20 instances in which driving to a consensus solution is
21 appropriate and valuable.

22 But I always keep in mind that one of the
23 consensus bills that we passed in this Legislature was a minor
24 matter involving electricity de-regulation --

25 MS. TUCK: Good point.

26 SENATOR BOWEN: AB 1890, which was a consensus
27 measure by the time it got done. And there are any number of
28 other measures like that.

1 And then there are a lot of measures where there
2 was not a consensus, including the Pavley greenhouse gas bill,
3 including then-Assemblywoman Solis' first environmental justice
4 bill.

5 And my concern is that you have a history of many
6 years of working to water-down or reduce the strength of those
7 kinds of things.

8 Where I come out on this is that if we were
9 voting on a position that was as a member of this board, I would
10 vote to confirm you.

11 But the position of the Chair is the only
12 full-time position. It's where staff resource decisions get
13 made, the agenda gets set, all of those kinds of things. And
14 it's not a place where I think we want a -- we want a true
15 advocate, and then we want from that position someone to work
16 where possible on consensus.

17 When I look at the challenge you have ahead, give
18 the --

19 MS. TUCK: Huge challenges.

20 SENATOR BOWEN: -- the Mexican truck issue, and
21 the addition of all of those emissions, I don't think this is
22 going to be a consensus-driven process in a lot of places.

23 MS. TUCK: I'd like to speak to that point.

24 I think building consensus, and I've had this
25 discussion with one Member of this Committee, building consensus
26 is one leadership strategy, and it can be effective and often is
27 the right thing to do.

28 But there are times where you cannot reach

1 consensus. Sometimes there's extremes, and you have to ignore
2 the extremes and build the consensus here.

3 There are other things where you're not going to
4 have consensus, and you just have to do the right thing. And
5 that's called leadership. And I think everyone who's on this
6 Committee knows that personally.

7 I've gone through in the last -- in 2004 a
8 leadership program, Leadership California, and have really been
9 in the past couple of years been doing a lot of reading on
10 leadership. And, you know, that's why I've pursued this
11 position now.

12 But I do not believe that I always be working for
13 consensus.

14 That said, I think there are a lot of issues that
15 come before the Air Resources Board where groups just tube
16 things, or try to achieve things, but if you have a strong
17 leader there who can, you know, get them to the table and
18 focused on the solution, that's good.

19 But also I will be a person who can say, you
20 know, if you don't think you're part of the solution, sorry,
21 you're going to be regulated.

22 SENATOR BOWEN: I think that's where the issue is
23 joined for me. We all have to make a determination all the time
24 as to where to try to find a consensus and where you're not
25 going to, and you have to press ahead.

26 MS. TUCK: Right.

27 SENATOR BOWEN: And for the position of Chair, as
28 opposed to positions of membership of the Board, I really want

1 someone whose background is neutral.

2 And part of it is really because you're
3 responsible, you need to have the trust of all sides, the
4 breathing community, the people who care about clean air. Not
5 the industry doesn't. They certainly do, you know. But the
6 natural thing for any business to do is to see if the costs
7 can't be sent somewhere else in order to achieve that goal.

8 So, I'm just not comfortable with that. And I
9 wish the Governor had appointed you to a position on the Board
10 and sent someone who has a science or regulatory background to
11 do this position. Perhaps -- well, that's enough.

12 CHAIRMAN PERATA: Thank you, Senator.

13 Senator Cedillo.

14 SENATOR CEDILLO: Very interesting times, I
15 think. It's a process, and we definitely haven't reached
16 consensus on this, other than the fact that this is a
17 controversy. It's a real paradox.

18 The Governor, who has, in his short time,
19 distinguished himself in the areas related to the environment,
20 and most obvious by the appointments of Secretary Tamminen and
21 Dr. Alan Lloyd, has really distinguished himself in these
22 areas.

23 So, the irony is that with those appointments,
24 with his actions, with his proposals, that your proposal, the
25 proposal for your nomination, does not have the support of the
26 environmental community. That is a challenge for the Governor.

27 You know, I like to see consensus in the things
28 that I do. I think it is a leadership strategy.

1 And I find it -- it just concerns me. And it's
2 interesting. It concerns me. The rancor of your opponents
3 concerns me, the tone, the efforts to create extremes, to
4 criticize even any of the good.

5 I think some of the representations and
6 characterizations of you, in particular of your person, have
7 been offensive. That the opposition does not serve itself well
8 by mischaracterizing you.

9 The record is well established. And I think
10 that's just been unfair, and the opposition does not serve
11 itself well.

12 And it's also unfair to construct this conflict.
13 I don't know anyone in this room who doesn't care about clean
14 air for themselves, for their families, and for their
15 communities. They all approach it from different more specific
16 responsibilities, but I think everyone obviously cares about it,
17 if they care about their life and themselves.

18 The question of process is one about, what is the
19 appropriate due process? How extraordinary is your situation?

20 The Governor has known for a significant time
21 that there have been objections brought to us, Members of the
22 Committee, about your appointment; that there have been concerns
23 that were voiced very strongly. And he's known that for a
24 significant time period.

25 We must rely on the input that we get. We would
26 like to hear from the Governor, because we would like to work
27 collaboratively with him, grant his appointments. These are his
28 discretion.

1 But we also have an obligation to weigh that, and
2 this is the one area in which there is a balance of power
3 between the executive and the Legislature in which we are
4 charged to weigh those.

5 So, the Governor still, as your situation moves
6 to the Floor, will still have time to weigh in, to give us
7 assurances, because there is a difficult question that's being
8 posed for us. That is the question of this time period for you
9 to make decisions, important decisions, that we will in large
10 part be unable to undo. So, we must rely on the record that's
11 before us to make those decisions, and then our decision
12 embraces those risks, whether we confirm or not confirm.

13 So again I say that, you know, the process will
14 continue. This obviously moves to the Floor. It can be heard
15 as soon as tomorrow but as late at the end of this period, or
16 beyond that.

17 But that there's a need for us to hear more from
18 the office of the Governor and to have a sense, because of the
19 urgency that's been created, and the importance from both sides,
20 for us to have, at least for me to have, a greater sense of
21 confidence that, should you be given that time period, that we
22 can feel comfortable with the decisions that you will make,
23 because the challenges with respect to air for California, the
24 people of California, are extraordinary.

25 And so, our decisions are very important because
26 they weigh in the balance.

27 So, I think that at this point, it's for me, at
28 least, I would like to hear more and take advantage of the time

1 that the process does provide us as this moves to the Floor.

2 CHAIRMAN PERATA: Thank you.

3 I wanted to make a comment that Senator Battin
4 brought up. He's not here, but I'll make it anyway.

5 That was, making a decision quickly as opposed to
6 providing more time on the 365-day calendar, we made some, as I
7 think Senator Bowen pointed out, we made some pretty swift
8 decisions. In all but one instance, I don't regret it. But in
9 that one instance, I do. Had I known now what I didn't know
10 then, I would not have confirmed. And the damage, however, has
11 been done. In my mind, it's been very consequential.

12 So, to suggest that we should let everything just
13 play out over a matter of months, and then no harm, no foul, is
14 simply not accurate.

15 This really is not very complicated.
16 Unfortunately it is your life, and I'm very respectful of that.

17 California has been part of history where people
18 who we didn't expect to do things did great things: Nixon went
19 to China; Earl Warren changed the face of the Supreme Court.
20 Who would have known?

21 However, those are exceptional situations. What
22 we have to go on, again, is past performance. And in just
23 looking at the resume of who you've been with, and I cannot
24 separate out your work at CCEEB from who you are. But if you
25 were to look at, and just knowing nothing were to look at people
26 that, you know, your past, not only CCEEB but a couple of other
27 employers, where you go back and look at the web sites, their
28 own web sites, attorneys for broad range of class, a broad range

1 of industries from telecommunications to steel mills,
2 pharmaceutical industries, chemical manufacturers, waste
3 disposal companies." And then there are similar things, members
4 of the board, the treasurer of CCEEB is an officer in one of the
5 major oil companies.

6 Those are things that the burden falls to us.
7 That's now the standard of proof we have to overcome.

8 Your appointment really has set you up for a
9 disproportionate amount of scrutiny. It's an onerous burden
10 that I don't think should be there.

11 And there's also an enormous risk for everyone,
12 because every decision that you make will have consequence. And
13 frankly, as an at-will employee, I'm assuming that the reason
14 these are at-will is that if you're not doing the will, you're
15 going to be gone.

16 MS. TUCK: That was communicated very directly to
17 me.

18 CHAIRMAN PERATA: Yeah.

19 And I don't know that anybody could bear up under
20 that. But for people like me, and others here who have opposed
21 you, the burden will be every time you make a decision, and it
22 is in line with your history not with whatever somebody
23 perceives the reality, you will have failed, fairly or
24 otherwise.

25 The position requires an honest broker, and I am
26 not at all convinced that you could not be one. However, what
27 we know now does not allow you to inherit that role.

28 And I've been a politician long enough to know

1 that, coming from a liberal background, I know the scrutiny I'm
2 under when I go to the right, and when I have taken positions
3 that more of my colleagues thought as inconsistent with what a
4 liberal would do. And while it may be the right thing to do,
5 and it may be ground-breaking, it is enormously stressful. And
6 I don't think it ever allows for one to take a good, honest look
7 at what needs to be done.

8 But I'm a Legislator. This position is
9 administrator.

10 So, I just believe that, given the fact that air
11 is such an enormous problem in the State of California; given
12 that this is one of the most well attended and serious
13 discussions that we've had on any topic since I've Chaired this
14 Committee; and given the fact that there has to be an implicit
15 sense of reliability in what we are about to do into the future;
16 and the fact that because this would be ground-breaking, in that
17 we have never had an industry person, in however we carve that
18 up, you have represented as a lawyer, as a lobbyist, industry
19 representatives, those who would be regulated. We've never been
20 in that position before. So immediately, we will have changed
21 the direction of the Air Board over the last 40 years.

22 And in doing so, we then, all of us, become
23 suspect in our motivation, and we will lose a certain
24 credibility that many of us have been able to build up,
25 demanding, demanding that we do not sacrifice the environment
26 for the sake of the economy.

27 So, I regret that you're in this position, and I
28 regret I'm in this position. I think it could have been

1 otherwise; it is not.

2 As Senator Bowen said, it pains me that someone
3 as qualified and as willing as you are to serve the public is in
4 a position like this, rather than in a position where you
5 demonstrate and grade your skills, and then the promotion
6 becomes prima facie evidence to your qualifications.

7 So, I am going to reluctantly and painfully not
8 support your confirmation. But I will tell you that your
9 confirmation, regardless of what happens here today, will go to
10 the Floor, and it will be subject to a discussion by the entire
11 State Senate. This is a matter of high consequence to all of
12 us, and so it will. And we'll do that swiftly.

13 And I just want to say that there are very few
14 people that I know that would have put themselves in a position
15 for this kind of scrutiny, somebody who, I believe, is well
16 intended and as well skilled as you are.

17 And I just want to thank you for that.

18 And win or lose, up or down, you're really a
19 strong credit to not only your family, but to this state. And I
20 want to make that point again, and again, and again.

21 MS. TUCK: Thank you.

22 CHAIRMAN PERATA: And would ask you, you're a
23 young woman, don't get discouraged. We've already determined
24 that you're different from Alan Lloyd, and you're a woman.

25 [Laughter.]

26 CHAIRMAN PERATA: So, that having been clarified,
27 I just want to make clear that this is a very, very difficult
28 decision for all of us.

1 With that, we had a motion from Senator Battin.
2 That's his job.

3 And before we close, I would like to give you the
4 opportunity, if you'd like to say anything in conclusion?

5 MS. TUCK: I appreciate the Committee giving me a
6 hearing today. I wish it would have been next year, where I had
7 a record at ARB before you. But I do appreciate the chance to
8 be here, and I do think the questions were fair. I appreciate
9 the heartfelt and honest comments that you gave me.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 Please call the roll.

13 SECRETARY WEBB: Ashburn.

14 SENATOR ASHBURN: Aye.

15 SECRETARY WEBB: Ashburn Aye. Bowen.

16 SENATOR BOWEN: No.

17 SECRETARY WEBB: Bowen No. Cedillo.

18 SENATOR CEDILLO: No.

19 SECRETARY WEBB: Cedillo No. Perata.

20 CHAIRMAN PERATA: No.

21 SECRETARY WEBB: Perata No.

22 CHAIRMAN PERATA: We'll leave the roll open
23 until Senator Battin gets back. He's presenting a bill.

24 Thank you very much.

25 MS. TUCK: Thank you.

26 [Thereafter, SENATOR BATTIN
27 voted Aye, making the final
28 vote 2-3 for confirmation.]

1 CHAIRMAN PERATA: We'll just do a couple of bill
2 referrals here.

3 [Thereupon the Rules Committee
4 acted on legislative items.]

5 CHAIRMAN PERATA: We have two final
6 gubernatorial appointees for the Southwestern Low-Level
7 Radioactive Waste Commission. That would be Donna Early and
8 James Tripodes.

9 Would you like to come up in tandem? There's
10 strength in numbers.

11 I can't promise you that we'll keep you here for
12 three hours like the last one.

13 We will also, in the spirit of fairness, be
14 limiting the opposition and proponent presentations to time.

15 And I'd ask you, Donna, would you like to make a
16 presentation? Then James, you can follow.

17 MS. EARLEY: Thank you.

18 Mr. Chairman, Members of the Committee, good
19 afternoon. I appreciate this opportunity to present my
20 qualifications to continue as a representative of the people of
21 California on the Southwest Compact Low-Level Radioactive Waste
22 Commission.

23 I wish to state that the views that I express
24 today are my own and do not represent my employer or other
25 organizations.

26 Since earning degrees in environmental health and
27 radiation physics, I've dedicated my career to protecting both
28 people and the environment from hazards, especially radiation.

1 For the last 28 years, I've been the Director of Radiation and
2 Environmental Health and Safety at a large teaching and research
3 medical center in Southern California.

4 My experience includes teaching medical
5 professionals, research scientists, entry-level support staff,
6 patients, families, members of the committee, and students about
7 the benefits and hazards of radioactive materials and toxic
8 substances. I've assisted our physicians and scientists in
9 designing clinical and research protocols that keep the exposure
10 to both the patients, the families, and the environment to a
11 minimum.

12 Over the last 20 years, many substitutes of
13 materials and protocols have been introduced for our researchers
14 to try to replace radioactive materials. During that time, the
15 volume of radioactive materials has substantially reduced,
16 but -- through minimization and treatment technology, but there
17 is still a need for radioactive disposal.

18 Contrary to the mischaracterizations of my intent
19 as a Commissioner, I do not now, nor have I ever personally
20 advocated the repeal of AB 2214. I would not professionally
21 support a site that does not meet the safety criteria, or is not
22 permitted under the law.

23 I believe that the Commission is charged under
24 law to do whatever is reasonably necessary to ensure that
25 low-level radioactive waste is safely disposed of and managed
26 within the district. However, according to the law, the role of
27 Commission is limited. Article 5 Public Law 10712 specifically
28 states,

1 "This compact does not confer
2 authority to the Commission
3 regarding the siting, the design,
4 the development, the licensure,
5 the regulation, the operation,
6 the closure, the de-commissioning,
7 or the long-term care of any
8 regional facility."

9 That is not the role of the Commission.

10 Currently, 36 states are without regional
11 disposal sites. Clearly the intent of the Low-Level Waste Act
12 has not been met.

13 In 2008, the only facility that accepts the
14 higher level B and C waste from this compact is scheduled to
15 close.

16 California has the responsibility, as the host
17 state under the compact, to provide disposal for waste generated
18 within California, Arizona, North and South Dakota. I believe,
19 however, that it would be in the best interest of both the
20 citizens and the businesses in California to increase our
21 efforts to negotiate either maintaining or obtaining access to
22 out-of-compact sites.

23 I wish to also reiterate that the request for
24 legal clarification discussed at the last Commission meeting was
25 a result of a discussion regarding the settlement reached
26 between the State of Nebraska and the Central Interstate
27 Commission. It was pointed out to the members that the laws
28 governing the Interstate Compact laws and Compact -- or

Commission responsibilities are vastly different than our laws.

It didn't -- the basis for the lawsuit against Nebraska for failing to provide a waste facility, and the subsequent settlement, do not apply to our Compact.

That conversation, however, did raise concerns on the part of the non-California Commissioners whether the Commission could file a suite or be sued if the Commission was unable to meet its requirements under the law.

The claim that I or any member of the California Commissioners called for a suit against California is false.

Currently there are three non-California Commissioners, and as a result of the recent tragic taking of the life of Commissioner Lull, only one California Member. The Compact law provides that California is allowed four members in order on assure that the needs and the concerns of the host state, which is us, prevail.

Confirming Mr. Tripodes' and my appointments will assure that California's interests are not disregarded.

I have supported the Commission since it was established. I applaud the attempts -- its attempts to evaluate and review proposals for exporting waste, its efforts to continue to evaluate disposal options, and the continued endeavor to educate generators on volume reduction techniques and safe transport.

As a professional, I bring to the Commission a unique perspective, which includes experience, knowledge, and specific challenges of the radioactive materials users, especially in the medical and biotechnical research fields. My

1 many years of counseling patients and their families, and
2 teaching students about the risks and benefits of radiation and
3 toxic materials have made acutely aware of the need to address
4 the concerns and fears of the general public.

5 My commitment to a clean and safe environment is
6 unwaivering. I believe that my experience and training
7 qualifies me to be of service to the people of California as a
8 Commissioner of the Low-Level Waste Compact Commission.

9 I'd be happy to answer any questions.

10 CHAIRMAN PERATA: Thank you.

11 MR. TRIPODES: Mr. Chairman and Members of the
12 Rules Committee, good afternoon. I appreciate this opportunity
13 to meet all of you and to describe why I believe that I am
14 qualified to continue serving as a representative of California
15 on the Southwestern Low-Level Radioactive Waste Commission.

16 As a Commissioner, I do not represent my employer
17 or any other organization, and the views I express today are my
18 own.

19 I also want to mention that I receive no
20 compensation for serving on this Commission.

21 I have more than 30 years of experience in the
22 safe use and disposal of radioactive materials. My entire
23 career has been devoted to protecting the environment against
24 radioactive contamination, and to protecting workers and the
25 public against unnecessary exposure to radiation sources.

26 My experience includes minimizing the generation
27 of and reducing the volume of radioactive and hazardous waste,
28 and fostering the use of innovative technologies for the safe

1 management of these wastes, and for environmental restoration of
2 contaminated sites. And my peers very recognized me for this
3 work internationally.

4 For most of my career, I have also been involved
5 in federal and state regulatory matters regarding radiation
6 protection and environmental protection. Most recently, I
7 worked together with the national organizations and with
8 bipartisan Congressional staff on provisions of the new Energy
9 Policy Act of 2005, to improve the safety and security of
10 radioactive sources to prevent their use by terrorists.

11 Regarding my position as a Commissioner, I would
12 like to clarify a few misunderstandings and misconceptions about
13 my views on the Commission's authorities and responsibilities,
14 and the State of California's responsibility as a host state, to
15 provide for disposal of low-level radioactive waste routinely
16 generated by more than 200 public and private organizations
17 within the States of Arizona, California, North and South
18 Dakota.

19 First, I want to assure you that I do not
20 advocate repealing AB 2214, enacted in 2002. And I no longer
21 support the development of any low-level radioactive waste
22 disposal facility at Ward Valley. I now believe that such
23 efforts would be unproductive.

24 I would like to mention that I was unable to
25 attend the last Commission meeting in April. And because I was
26 not able to attend, I sent a note to the Commission to suggest a
27 whole variety of options that they might talk about for
28 brain-storming purposes. Included on that list for the sake of

1 completeness were those two -- was the item of considering
2 repealing AB 2214. I didn't really think that was a realistic
3 thing to consider, but I just put it on the list. Now I regret
4 even ever putting it on the list. But I really didn't think
5 that that was -- that that was something that was really viable.

6 I want to make it clear that I don't advocate
7 repealing the law.

8 The Commission, as Donna mentioned, has no
9 authority regarding the siting, design, or development of new
10 disposal facilities anywhere. While the Commission does not
11 have such authority, it is charged under the law to do whatever
12 is reasonably necessary to ensure that low-level radioactive
13 waste is safely disposed of and managed within this four-state
14 region.

15 And notwithstanding this responsibility, I do not
16 support legal action against the State of California for failure
17 to meet its obligation to the other party states.

18 Of the 19 responsibilities assigned to the
19 Commission by federal and states laws, currently the most
20 important one is to approve the exportation of low-level
21 radioactive waste to out-of-region facilities in Utah and South
22 Carolina. Exportation is necessary because there are no
23 disposal facilities located within our region.

24 The States of Arizona, North and South Dakota
25 each have one Commissioner. California, as the designated host
26 state, is entitled to four Commissioners. Presently there is
27 only one confirmed California Commissioner. Five votes are
28 necessary to approve the exportation of local-level radioactive

1 waste for disposal. Thus, it is important to have more
2 California members confirmed to assure that the Commission can
3 perform this vital function.

4 Continual authorization of exportation is
5 necessary to prevent the undesirable storage of this type of
6 waste at more than 200 sites in the four party states.

7 Commissioner Earley's and my confirmation would
8 also assure that California has sufficient representation to
9 prevent the Commission from taking any imprudent legal action
10 against the state, if such action were ever to be contemplated.
11 Indeed, if the Commission is involved in any legal action, it
12 may be as a co-defendant with California if it fails to assure
13 the continued exportation of this waste for disposal outside of
14 the region.

15 On July 1st of 2008, the disposal facility in
16 South Carolina will no longer be accepting waste from our region
17 and 32 other states. That facility is the only one in the
18 nation currently available to waste generators in those 36
19 states for disposal of the higher activity Class B and C waste.

20 I support efforts to negotiate long-term access
21 to the currently operating and any future disposal sites that
22 are located outside the boundaries of the four Commission party
23 states.

24 I support continuing the Commission's Annual
25 Workshops to inform waste generators of current regulatory
26 requirements and best available technologies for waste
27 minimization and treatment.

28 I will work with my fellow Commissioners to

1 assist State of California officials in their negotiations with
2 other states if requested, and participate in discussions with
3 other regional commissions as appropriate.

4 I look forward to now answering any questions
5 that you might have. Thank you.

6 CHAIRMAN PERATA: Thank you.

7 Senator Bowen, why don't you go ahead.

8 SENATOR BOWEN: I do have a few questions.

9 I guess for the questions that I have for both of
10 you, I won't be specific. There's a couple questions that I
11 have of just one person.

12 First question is with regard to AB 2214. My
13 understanding is that prior to passage of that bill, both of you
14 supported and pushed for construction of the Ward Valley dump,
15 despite serious concerns by scientists with the U.S. Geological
16 Survey about the potential for contamination of the Colorado
17 River through area aquifers.

18 How do you reconcile your position in favor of
19 building that facility at that particular location with the
20 science about the threat to drinking water?

21 MR. TRIPODES: I can address that.

22 After the scientists at the -- who were
23 affiliated with the USGS expressed some concerns and asked some
24 questions, the National Academy of Sciences was commissioned to
25 do a study on those questions that were raised by the -- by
26 those scientists. And the conclusions of the -- the major
27 conclusion of the National Academy panel was that there -- that
28 if all of the plutonium, which is the most hazardous

1 radionuclide that would be placed in the site, if the entire
2 site inventory were released all at the same time and reached
3 the Colorado River, that the amount detected in the river would
4 be indistinguishable from the natural background in the river.
5 That was one of the major conclusions.

6 SENATOR BOWEN: Does that mean you think there's
7 not a threat to drinking water?

8 MR. TRIPODES: I believe there was not -- there
9 is not a threat to drinking water, because of the -- if you
10 read -- the report is a rather lengthy one. But the
11 overwhelming consensus of those, I think some 17 scientists who
12 are experts in a number of different disciplines, was that the
13 water quality, the drinking water quality would not have been
14 affected if that site were licensed and operated as -- as it was
15 prescribed.

16 SENATOR BOWEN: AB 2214, how did you conclude
17 that --

18 MS. EARLEY: Well, I read the same reports that
19 Jim did.

20 And I have to say that the dynamics of the
21 disposal options have changed. The Utah site was not -- was not
22 even in the question when we began the quest for Ward Valley,
23 and the volume of radioactive material that's generated has
24 substantially been reduced. So, the whole basis for choosing a
25 site, and how it was going to operate, and whether it would be
26 affordable for generators to use have all changed.

27 The Legislature has spoken. It is very clear
28 that the Ward Valley site is not acceptable to the people of

1 California. So, despite the fact that the Commission has no
2 authority over this and no responsibility for it, I just don't
3 believe that that would be a useful path for any of us to go
4 down.

5 We -- there are existing sites that are currently
6 taking our radioactive waste that have excess capacities. I
7 would rather that we spent our time negotiating with the
8 Governor, for instance, of Washington. The Washington site, we
9 were -- we were not permitted to go to the Washington site at
10 the formation of the Compact because of, you know, a lack of
11 Governor-to-Governor agreement. That was 20 years ago.

12 Things are different, and I think it's worth
13 going back, rather than taking the time to try to find a new
14 site, characterize it, go through the environmental impact, at
15 the end we would end up with a site that would not be
16 economically feasible nor do I think it would be needed at this
17 time.

18 SENATOR BOWEN: Let me turn, for both of you, to
19 the questions that you were asked with regard to the repeal of
20 AB 2214, because I wasn't clear about your position.

21 I think, Ms. Earley, you wrote an answer. The
22 question was, "Do you favor repealing AB 2214," and you wrote,

23 "Any site that is chosen within
24 the Southwest Compact will need
25 to meet all state and federal
26 laws which are designed to
27 protect public health and the
28 environment. The process for

1 identification and characterization
2 of suitable sites is very lengthy
3 and technically challenging. The
4 data and findings from the work
5 to date should be evaluated against
6 the other options the state may
7 choose to pursue to assure that
8 protection of the public and
9 environment is optimized."

10 What I don't see in there is whether or not you
11 favor repealing 2214.

12 MS. EARLEY: No, I do not.

13 SENATOR BOWEN: Same question, although you
14 obviously didn't write that answer.

15 MR. TRIPODES: Well, I think my position now
16 ought to be clear that I don't favor repealing the law.

17 I think at the time that I answered that
18 question, I was -- that was, I think, right after I had
19 submitted my long list of things for the Commission to consider.
20 And it was still something that was on the long list, but at the
21 bottom of the list.

22 So, I didn't declare as firmly as I am now
23 saying, I do not repeal -- I do not favor repealing the law.

24 I think I said that -- that if that were
25 something to be further considered, that it would require a
26 careful evaluation because of the -- some of the things that
27 Donna said, that we do have a different situation now, where we
28 have much lower volumes. And also, it would take many years to

1 go through the process of trying to locate any kind of -- any
2 kind of facility.

3 So, basically I don't favor repealing the law.

4 SENATOR BOWEN: That answer and your
5 characterization in your answer that there's a
6 mischaracterization strikes me as being different than the
7 content of your Friday, April 1st e-mail, in which you state:

8 "For consideration during the
9 discussion of agenda item 7, I
10 offer the following thoughts to
11 share with my commissioners."

12 You start with saying,

13 "It's important to communicate
14 the urgency for California to
15 fulfill its obligations as the
16 host state,"

17 which would mean siting a facility here.

18 Two, you reference the fact that after 2008,
19 there will be no commercially licensed facility, which I think
20 everyone agrees.

21 Third, you state that California should request
22 the U.S. DOE to provide disposal capacity before that date for
23 orphaned low-level radioactive waste.

24 Fourth, you state that California should not rely
25 indefinitely upon the availability of Envirocare, which is in
26 Utah.

27 Fifth, California should be requested to develop
28 a regional disposal facility.

1 And then sixth,

2 "In consideration of the foregoing,"
3 and this is the language I want to focus on,

4 "California should be requested
5 to repeal AB 2214 in it's
6 entirety. This statute prohibits
7 development of the proposed Ward
8 Valley LLRW disposal facility as
9 licensed in 1993 by the Department
10 of Health Services and upheld by
11 the courts. Repeal of this
12 statute, resumption of the land
13 transfer process from the federal
14 government to California, and
15 activation of the license would
16 assure timely development of
17 regional LLRW disposal capacity to
18 meet the needs of generators."

19 I see nothing in that that is either indicative
20 that it's to be a suggestion, nor do I see anything about going
21 through any evaluation.

22 It's pretty clear. California "should" repeal
23 the statute in its entirety.

24 MR. TRIPODES: My intent it was for them to
25 consider the whole list.

26 SENATOR BOWEN: But your list is a few things --
27 one, two, three, four, five -- and then it says, "in light of
28 the foregoing," "in consideration of the foregoing, California

1 should be requested to repeal the statute."

2 MR. TRIPODES: That if -- what I meant was, that
3 if California were going to -- were going to site -- to try to
4 go through the siting process, that it would take many, many,
5 many years if we -- if we didn't go to the Ward Valley
6 facility.

7 And what I say -- what I'm saying now is that I
8 think that that probably -- that language was probably too
9 strong in -- in suggesting reasons that one might request the
10 state to repeal that law, and that I no longer feel that that
11 really would be appropriate.

12 SENATOR BOWEN: Do you disagree with the urgency
13 for California to fulfill its obligations as a host state?
14 That's one number.

15 MR. TRIPODES: California -- California needs to
16 fulfill its obligations, but I believe that the best way to do
17 that is to continue using the existing out-of-state,
18 out-of-region facilities because they're already operating.

19 And when Barnwell closes -- if Barnwell closes in
20 July of 2008, if we cannot successfully negotiate continued
21 access to that site, we need to pursue the other options of the
22 other existing facilities, for instance, the one in Washington,
23 for instance the Department of Energy disposal facilities that
24 are not currently available for any commercial disposal, and
25 also to consider talking with the State of Texas for a facility
26 that they are -- that they are developing.

27 SENATOR BOWEN: In fairness, your list of things
28 that the state should do does include --

1 MR. TRIPODES: It does include that. I did write
2 that.

3 SENATOR BOWEN: But it also in the preamble lays
4 out a series of conditions. And the very first thing that you
5 say that we should do is to develop a regional disposal
6 facility, and you state that, "Given that a decade was required
7 for selection and licensing, it is highly unlikely that any
8 other facility other than Ward Valley could be developed."

9 MR. TRIPODES: Before 2008.

10 SENATOR BOWEN: I just find this to be a really
11 incredible answer. I don't see how you can possibly reconcile
12 that e-mail with the statement that you didn't support repeal of
13 the law.

14 If you did, that's fine. But for you --

15 MR. TRIPODES: Well, at that time I offered it
16 as -- as something that could be recommended.

17 MS. EARLEY: Could I just follow up?

18 SENATOR BOWEN: Actually, you don't have a
19 history. If I were you, I would stay out of this part of the
20 conversation. You can ignore the advice if you wish.

21 I mean, I just think one of the things that this
22 Committee has had a recent experience with is appointees not
23 being entirely forthcoming about their backgrounds.

24 Ms. Tuck, I think, to her credit, did an
25 exceptional job of talking to us about situations in which she
26 took another position.

27 I am extremely concerned that you would try to
28 recharacterize what to me is an extremely clear communication as

1 something other than what it was. I'm more concerned with that
2 than about I am about your background.

3 MR. TRIPODES: Well, at the time, I included that
4 as something that I thought was an option to be considered.

5 SENATOR BOWEN: All right. Well, we have a real
6 different understanding of what a list of conditions, followed
7 by, "California should repeal" means.

8 Let me ask both of you about your involvement
9 with Cal Rad Forum. As you probably recall, in the early 1990s,
10 when Senator Roberti chaired the Rules Committee, Russell Gould
11 was nominated to be the head of DHS. And as a condition of
12 approving his appointment, Rules got him to agree to have DHS
13 have an adjudicatory hearing on Ward Valley.

14 Cal Rad Forum then sued the Rules Committee to
15 get that hearing overturned.

16 Can you elucidate your involvement, both of you,
17 if any, with the Cal Rad Forum lawsuit against the Senate Rules
18 Committee in its role, establishing the need for an adjudicatory
19 hearing as a condition of an appointment?

20 MR. TRIPODES: I can't remember all the details
21 at that time. I was a Board Member at that time, but honestly,
22 I can't remember all the nuances of that.

23 I think the reason that Cal Rad opposed the
24 adjudicatory hearings was that that was a lengthy process, that
25 after -- after the license had already -- I'm trying to remember
26 now. I probably shouldn't even say because I can't remember all
27 the details.

28 But I was on the board at the time, and I

1 think that --

2 SENATOR BOWEN: I think you were President. No,
3 I'm sorry. That's not correct.

4 I think you were Chair. You don't remember?

5 MS. EARLEY: I don't recall.

6 SENATOR BOWEN: One additional question, again
7 with regard to Cal Rad.

8 In 2002, Cal Rad opposed SB 2065, which was a
9 Kuehl bill which required the Department of Health Services to
10 establish reporting procedures for low-level radioactive waste,
11 required generators to report to DHS on the waste they
12 generated, and required DHS to prepare an annual report.

13 Why would the state not want an inventory of how
14 much low-level radioactive waste we're generating in California?

15 MS. EARLEY: The concerns that we had at the time
16 had to do with the confidentiality of the list, and the
17 locations of waste, which now are even more of a concern after
18 9/11. But even prior to that, the concerns that we had was that
19 the process would not be protected enough, that information
20 would be shared.

21 SENATOR BOWEN: Your objection wasn't to --

22 MS. EARLEY: No, not to the inventory, but to
23 the fact that the -- we didn't think that the protective
24 measures were there to keep the data confidential.

25 SENATOR BOWEN: Same?

26 MR. TRIPODES: Yeah, I believe that's -- that's
27 correct.

28 SENATOR BOWEN: Final question. There are

1 currently in the country six commercial low-level radioactive
2 waste facilities. All are using shallow land burial, and all
3 are leaking radioactive materials.

4 Some believe that monitored, retrievable storage
5 facilities, that are built above ground, are safer and more
6 appropriate.

7 Can you comment on your thoughts on this
8 approach?

9 MS. EARLEY: I'm not aware that all of the sites
10 are leaking.

11 We only -- in our compact, we only are able to
12 dispose of in two sites: the Envirocare site and --

13 MR. TRIPODES: I'm not aware of any problems at
14 Envirocare site.

15 MS. EARLEY: And at the Barnwell site, the
16 leaking that occurred was in a small area from very old waste.
17 My understanding is that it has been contained, and that there
18 has been no further leaks in their design.

19 MR. TRIPODES: And the disposal technology is
20 different now. They're using concrete vaults now, I believe, to
21 place the waste in.

22 MS. EARLEY: Very different than it was in the
23 '60s and '70s.

24 SENATOR BOWEN: I have no further questions.

25 CHAIRMAN PERATA: Anybody in the audience who
26 would like to come in support of the candidates? Please come
27 forward.

28 DR. RAABE: Thank you. My name is Otto Raabe.

1 I'm a professor at the University of California, Davis, where
2 I've been for 29 years.

3 I have a doctoral degree in radiation biophysics
4 board, and I'm a board-certified health physicist. I've had
5 about 45 years of experience in radiation safety work.

6 I have been President of the National Health
7 Physics Society, which is a society whose mission is to promote
8 radiation safety, and consists of people in the United States,
9 all who are involved in radiation safety work.

10 I'm also the past President of the National
11 Academy of Health Physics, which is the organization of
12 board-certified radiation safety professionals.

13 I'm quite familiar with these two appointees.
14 They are both outstanding health physicists, radiation
15 protection workers, and they're very knowledgeable in the area
16 of waste disposal.

17 I've worked with them at various times. Jim
18 Tripodes used to be at Davis. He's been with the University of
19 California most all of his career, I think. Also I know Donna.
20 These are really two very highly qualified people who will do a
21 good job.

22 I think you have respect for fact, as Donna said,
23 that their careers have been dedicated to protecting people and
24 the environment from the possible harmful affects of radiation.
25 That's their main purpose. That's their whole career.

26 And I think that they have -- they're very
27 level-headed individuals and will do a -- be a credit to the
28 State of California and a benefit to the Commission.

1 So, I strongly support their appointment.

2 CHAIRMAN PERATA: Thank you.

3 MR. AHLQUIST: I am Alfred John Ahlquist, and I
4 work for the University of California, Office of the President.
5 But I'm here today on behalf of the Northern California Chapter
6 of the Health Physics Society that Otto just alluded to. I'm the
7 immediate past President.

8 I would like to speak on behalf of the nominees
9 because I believe they're both an excellent choice. I knew of
10 both candidates through their awards they received from the
11 National Society. Donna has an Outstanding Achievement Award,
12 and Jim has an outstanding Young Health Physicist before he was
13 40.

14 I've had the privilege to work with Jim Tripodes
15 for the last four years through his work at Lawrence Livermore
16 Lab and also on the Board of our chapter. And he was -- he
17 helped me a great deal when we bring the 2008 National Mid-year
18 Symposium to Oakland, and also in locating people to help when
19 we were contacted by the Breast Cancer Fund to provide technical
20 information on Assembly Bill 929, which just recently passed
21 both the Senate and the House.

22 They both have spent the bulk of their careers in
23 the academic and medical center settings, and they know the
24 problems involved. I believe they're both looking hard for
25 solutions because they're not easy solutions. It's very easy to
26 be against radioactive waste disposal, but if you're against one
27 solution, then I think you need to be looking for others, and I
28 think they're both trying to do that.

1 So, we need to find solutions while there's time
2 before we start running into having to store waste in 200
3 different locations.

4 So, I recommend that you confirm these
5 knowledgeable, skilled, solution-oriented people to their unpaid
6 volunteer jobs on the Southwest Compact Commission.

7 Thank you.

8 MS. HARTMAN: Good afternoon, Mr. Chairman and
9 Members. I'm Marcia Hartman, and I'm a health physicist at the
10 University of California, Davis Medical Center. I have a
11 Master's in Health Physics from the University of Florida, and
12 have been working in medical health physics for the last 15
13 years.

14 I'm happy to be here to testify in support of the
15 appointments of Donna Earley and Jim Tripodes to the
16 Southwestern Low-Level Radioactive Waste Commission.

17 I am also the President of the local chapter of
18 the Health Physics Society, and our Board of Directors has
19 endorsed their appointments, and you should be in receipt of
20 that letter.

21 I have known both Donna and Jim for the last 15
22 years, and have worked with them over the years on issues
23 dealing with the safe use and disposal of radioactive
24 materials. I have found them both to be very intelligent,
25 technically competent, and dedicated professionals. And they
26 are well respected by their peers in the Health Physics Society.

27 As a citizen of the state, I am concerned that
28 positions on this Commission be filled with technically

1 competent individuals who understand radiation and the risks
2 associated with it.

3 Their missions at their institutions is the safe
4 use of radioactive material for the benefit of society, while
5 ensuring the safety of their employees, patients, researchers,
6 and the public. As radiation safety officers and progressively
7 increasing responsibility positions that they have, they're very
8 knowledgeable about state and federal regulations on
9 radiation. And their jobs for more than 25 years has included
10 making decisions on the safe and economical ways of handling and
11 disposing radioactive waste.

12 I cannot think of many persons with the
13 education, breadth of experience, and dedication who are as
14 technically qualified as Donna Earley and Jim Tripodes to sit on
15 this Commission. I fully expect they will make sound decisions
16 on behalf of the people of this state if confirmed.

17 Thank you.

18 CHAIRMAN PERATA: Thank you.

19 MS. SCOTT: Kathryn Scott, representing the
20 California Hospital Association, and actually replacing our
21 in-house expert on low-level radioactive Waste, so unfortunately
22 don't have the qualifications of my predecessors on the issue.

23 But I can tell you that the Hospital Association,
24 numbering about 400 hospitals throughout California, supports
25 both the confirmation of Donna Earley and Mr. Tripodes. They
26 both have an excellent background on the handling and storage of
27 radioactive materials. They are very knowledgeable about the
28 importance of radioactive materials in health care, in providing

1 health care today.

2 One of the chief functions of the Southwestern
3 Low-Level Radioactive Waste Commission is to review and approve
4 applications for exporting waste to licensed facilities outside
5 the state. These decisions need to be made by qualified
6 individuals such as these two candidates.

7 Their expertise is also needed in carrying out
8 the role of -- the Commission's role in negotiating access to
9 additional sites.

10 Not having adequate low-level radioactive waste
11 site storage for diagnostic and treatment services in health
12 care is an issue that increases health care costs here in
13 California.

14 In addition, not having representation of the
15 three board members -- excuse me, the three Commissioners on
16 this Commission from California, has unfortunately put us at a
17 disadvantage.

18 We are pleased to support these two candidates
19 and their perspectives and experience in health care for the
20 Low-Level Radioactive Waste Commission. Thank you.

21 CHAIRMAN PERATA: Thank you.

22 MR. CASE: Good afternoon, Mr. Chair and Members.
23 My name is James Case. I'm health physicist at UC Davis Medical
24 Center, and I'm also a Board Member of the local chapter of the
25 Health Physics Society.

26 I'm honored to testify today in full support of
27 the appointments of Jim Tripodes and Donna Earley to the
28 Southwestern Low-Level Radioactive Waste Commission.

1 As a citizen of this great state, and as a
2 professional in radiation and environmental protection, I
3 believe it is imperative that the most highly qualified and
4 experienced and technically competent individuals possible
5 appointed to this Commission.

6 Vital research for diagnosis and treatment of
7 illnesses such as cancer, cardiovascular disease, Alzheimer's
8 disease, autism, AIDS, and degenerative diseases such as
9 rheumatoid arthritis depend on the use of low-level radioactive
10 materials. The ability to safely dispose of these materials in
11 a way that protects our environment and our citizens is
12 critical.

13 It would be wonderful if we only needed to use
14 short-lived radio nuclides for our research, but because our
15 bodies are all living creatures and made of carbon and hydrogen
16 predominantly, we sometimes need to use other longer-lived radio
17 nuclides such as Carbon 14 and Hydrogen 3 or tritium for
18 molecular tracers. If it weren't for the use of radiation in
19 biological research, we likely would not understand the double
20 helix structure of the DNA Molecule, or their function in the
21 role of the genes in their sequences.

22 It is the safe disposal of these long-lived
23 low-level radioactive waste that is the vital concern of the
24 Southwestern Low-Level Radioactive Waste Commission.

25 I and many of my colleagues believe that Mr.
26 Tripodes and Ms. Earley have the technical expertise and the
27 experience to serve on the Commission for the best interests of
28 our environment and the State of California. Their

1 distinguished careers have reflected their commitment to the
2 safe use and handling of radioactive materials that are used as
3 tools to benefit all of us.

4 Jim and Donna have demonstrated the highest level
5 of honesty and integrity in their collective 50-plus years of
6 experience and service to the public. I saw the spirit of
7 service and teamwork when I worked with Jim at the Lawrence
8 Livermore National Lab. At that time Jim was deputy department
9 head of Environmental Protection. Despite his busy schedule,
10 Jim volunteered willingly to assist my health physics team for
11 special projects. He didn't have to do so that. He just
12 willingly did it.

13 I cannot think of two individuals that command
14 more respect or esteem from their colleagues than Mr. Tripodes
15 and Ms. Earley. I have the utmost confidence that there's no
16 one more qualified or suitable than they to serve on this
17 Commission.

18 Thank you very much.

19 CHAIRMAN PERATA: Thank you.

20 Anyone in opposition?

21 MR. HIRSCH: Thank you. My name Dan Hirsch. I
22 am President of the Committee to Bridge the Gap, which has been
23 involved in this Ward Valley matter for about 15 years.

24 I was one of the subjects of that Rules Committee
25 hearing that Senator Bowen mentioned a decade ago that resulted
26 in Cal Rad Forum suing this Committee.

27 I want to bring several things to your attention
28 that I think pushed these appointments outside of the ordinary.

1 First of all, the Commission itself in general is not terribly
2 important. It can do a lot of good, but it can do one piece of
3 damage that's really very significant.

4 It has the power to sue the State of California.
5 And a similar compact commission in the Interstate Compact
6 Commission, sued Nebraska for about \$150 million over a dump
7 site that was to be run by the same company that was to run the
8 one here, US Ecology. A compact commission has the standing to
9 file that suit.

10 So, the assurances that you've been given today
11 are very important to know whether they are truthful. I've
12 asked the marshal to hand out to you an article from the Los
13 Angeles Times showing that this Commission, on which these two
14 members serve, in April took initial steps to sue the State of
15 California.

16 Included in your packet also are the minutes of
17 that meeting.

18 And despite what Ms. Earley said about not being
19 in favor of any action to sue the State of California, and what
20 both of them said, that it's important to be able to have them
21 on the Commission to block any such effort, Ms. Earley did not
22 oppose that motion. It passed unanimously.

23 I've just spoken earlier today with Mr.
24 Warmaldorf who confirmed to me that the decision by the
25 Commission to start the feasibility review of suing California
26 was passed without any opposition.

27 After that meeting, Mr. Tripodes sent in no
28 letter saying I oppose.

1 So, they're telling us we need to have them on
2 the Commission to prevent this Commission from suing California,
3 when one of them, Ms. Earley, supported the initial actions for
4 feasibility and the other took no actions to stop it.

5 This really matters because it could cost the
6 state approximately a quarter of a billion dollars. Many of you
7 view yourselves as fiscal conservatives who do not want to
8 increase the taxes of the public at all or increase the
9 deficit. If you confirm these two individuals, you are taking
10 the risk of indeed adding to that tax problem or deficit by a
11 quarter of a billion dollars.

12 It's not a theoretical matter. So, what it comes
13 down to is really the veracity that you can place on those two
14 nominees. Whether death-bed conversions that you've heard from
15 both individuals can be relied upon.

16 So, I think that's why it's so critical when you
17 take a look at the statement made in writing to Senator Perata
18 by Mr. Tripodes that he does not support the repeal of AB 2214,
19 and does not support the revival of Ward Valley, and then look
20 at his letter, e-mailed to the Commission, saying directly that.
21 Look at the Minutes of the Commission meeting which say directly
22 as well that Mr. Tripodes wrote urging that we take action to
23 repeal AB 2214, and that we attempt to revive Ward Valley.
24 Raise very serious questions about whether these nominees have
25 been truthful with this Committee.

26 There is an additional aspect of this that
27 matters a good deal, which is, even if you feel that the
28 commitments that they're making now aren't contradicted by

1 things they did just a few months ago, you have to remember that
2 their organization, Cal Rad Forum, sued this Committee to
3 overturn commitments made by other nominees on Ward Valley a
4 decade ago. They would not abide by those commitments. They
5 went to court. They sued both this Committee and the State of
6 California.

7 So, how can one now rely upon what they tell you,
8 A, because it is contradicted by what they did a few months
9 earlier; and B, because their organization has a history of
10 suing to try to overturn commitments made to this Committee?

11 Now, I also want to point out that the ability to
12 overturn AB 2214, we all know, doesn't rest with this
13 Commission. The question is, are they being truthful when they
14 say they haven't tried to take that action?

15 But they can sue. And the issue becomes a
16 conflict of interest. In their statements, they did not
17 identify the fact that Ms. Earley is a current Board Member of
18 Cal Rad Forum, past Chair, current Board Member. And
19 Mr. Tripodes is a past Board Member.

20 The third public member of the Commission at the
21 time these two were nominated was a man who's now deceased, but
22 who was also a current Board Member of Cal Rad Forum.

23 This Commission has seven slots. The reason for
24 that is so that California, if it takes all four slots and
25 controls all four of those votes, can block anything those other
26 three states wish to do. It takes just one of them to vote to
27 initiate a suit.

28 So, there is a conflict of interest. I have

1 provided to you an interesting letter, which I'd like you to
2 compare with the letter that you have from Mr. Tripodes, sent on
3 April 1, the day before the lobbyist for his lobbying group,
4 Mr. Pasternak, wrote also to the Southwest Compact Commission,
5 urging the repeal of AB 2214, the revival of Ward Valley, and
6 almost verbatim, many of the same recommendations as those made
7 by Mr. Tripodes. Obviously working in coordination with the
8 lobbyist of the group on whose board he served for a long time.

9 And then Mr. Pasternak's recommendations to the
10 Commission were then voted on by Ms. Earley, a current Board
11 Member of the very organization on which she serves as a Board
12 Member. He's the lobbyist; she's the Board Member. He's making
13 recommendations to a panel that she serves on now as the state
14 official.

15 And rather than do what you heard by one of your
16 earlier nominees of recuse herself from anything involving the
17 organization she's associated with, she voted on those matters
18 recommended by her lobbyist.

19 So, I'm very troubled that a Commission designed
20 for the safe disposal of radioactive waste would have on it two
21 or three Board Members of a lobbying group for the radioactive
22 waste industry.

23 But I'm more troubled that they've not been
24 candid with this Committee. They've taken actions to initiate
25 suing the State of California. They have urged the repeal of AB
26 2214, and they've sued this very Committee in the past to
27 overturn commitments.

28 Under other circumstances, maybe one could

1 believe the death-bed conversion and say, "You've made a
2 commitment to this Committee. We're going to now presume you're
3 going to live up to it."

4 I think under those circumstances, that's very
5 difficult.

6 Let me stop there. Thank you.

7 SENATOR CEDILLO: Mr. Chair, I'm unfamiliar with
8 these organizations.

9 Can you a little more exact.

10 MR. HIRSCH: Sure.

11 SENATOR CEDILLO: The mission of Cal Rad versus
12 the mission of the Commission? How the conflict and where the
13 conflict emerges? Be more specific what the conflict is, and
14 where might be an appropriate role for counsel to advise recusal
15 or not.

16 MR. HIRSCH: Thank you. I'm sorry, because I was
17 using an abbreviation.

18 Cal Rad Forum is the California Radioactive
19 Materials Management Forum. It is the lobbying organization for
20 the radioactive waste industry. And it is the organization that
21 has been here at the Capitol all the last decade, opposing every
22 environmental bill to try increase the protections for
23 radioactive materials.

24 They opposed AB 2214, which was the Keeley bill
25 that ended Ward Valley and required we don't use shallow land
26 burial when we do do radioactive waste disposal, the bill you
27 supported.

28 They opposed Senator Bowen's bill to try to have

1 recycling of tritium, so that rather than throwing it into the
2 environment, we would re-use it.

3 So, they've been a primary nuclear waste
4 generators' lobbying group here at the Capitol, and they are the
5 primary nuclear waste generator group appearing before this
6 compact Commission.

7 This Commission is composed of four states:
8 Arizona, North and South Dakota get one vote each, so they get
9 three. California gets four so we can block whatever the other
10 three states might want if it's against their interests.

11 But if you have Cal Rad Forum asking that
12 Commission to do things through their lobbyist, and you have
13 that coordinated with Mr. Tripodes, a Board Member, urging the
14 same thing, and then Ms. Earley, a Board Member, a Commission
15 Member, voting to do what her lobbyist asked her to do, the
16 lobbyist for the organization she still serves on, you have an
17 immense conflict of interest.

18 I'm just baffled by it. It's as though you
19 served on the board, let us say, of Gulf Oil, and the Gulf Oil
20 lobbyist came here and asked you to do something. You wouldn't
21 do that. You wouldn't be on that board, or you would recuse
22 yourself.

23 But we have board members of this lobbying group
24 voting on matters that that lobbying group is asking them to do.

25 MR. MAGAVERN: Senators, I'm Bill Magavern with
26 Sierra Club California.

27 These nominees, as has just been explained, come
28 from the radioactive waste generators. So, they're unbalanced

1 appointments.

2 But despite that, we did not oppose their
3 appointments until after the April meeting of the Commission,
4 when the Commission voted to look into suing the State of
5 California. That's where the risk is here. And that's what
6 prompted us to actually oppose their serving on this
7 Commission. Because the basic minimum, absolute rock-bottom
8 responsibility of a California appointee on this Commission
9 would be, when people say, "Well, maybe we should ask our
10 counsel whether we should sue the State of California," would be
11 to say, "No. I represent the State of California. We don't
12 want this Commission to sue the state."

13 Neither of these appointees did that. And the
14 way that they have tried today to spin their April actions
15 undermines their credibility.

16 Therefore, we recommend that you reject their
17 confirmation.

18 MR. KLASKY: Good afternoon, Senators. My name
19 is Phil Klasky. I'm Co-Director of the Bay Area Nuclear Waste
20 Coalition, a nonprofit public interest group. I also spent the
21 last 15 years of my life fighting against the controversial
22 proposal for a radioactive waste dump at Ward Valley.

23 I believe Governor was ill advised to put these
24 two lobbyists, because they have worked for the Cal Rad Forum in
25 that capacity, and they are the example of special interest
26 group. So, they're representing a special interest group here.

27 For over a decade, Indian tribes, environmental
28 and environmental justice groups, public health organizations,

1 scientists, cities, counties, local people, local governments
2 fought against the proposal for a radioactive waste dump at Ward
3 Valley. Cal Rad supported it.

4 And we don't want to see another protracted
5 battle against the shallow landfill long-lived waste somewhere
6 else in California or some other state.

7 And when you look at their track record, they
8 proposed putting this waste dump in a minority community, and
9 there's a word for that. It's called environmental racism.

10 Earley and Tripodes aggressively advocated for a
11 dump designed to leak, and supported the infamous dump
12 contractor, US Ecology, which has left a trail of leaking dumps
13 and litigation across the nation. Their dump in Washington is
14 leaking into the Columbia River and on to the Yakima Indian
15 Reservation. And their dump in Kentucky is a Superfund site.
16 That's not what we want.

17 Shallow land burial of radioactive waste is
18 absolutely the worst way to deal with it. And six of the seven
19 commercial low-level radioactive waste dumps across the country
20 are currently leaking into the surrounding environment. The
21 seventh is Envirocare in Utah, and it is designed to leak. And
22 that I know from my experience on the Atkinson Advisory Group as
23 a consultant to the Science Panel when we talked to folks who
24 worked at Envirocare.

25 Just recently, in a statement to Pacifica News
26 Service, Mr. Tripodes expressed his view that the Ward Valley
27 site was appropriate for a nuclear waste dump due to the
28 hydrology of the area, and that there are no important resources

1 there.

2 He obviously ignored the studies by the U.S.
3 Geological Survey that beneath Ward Valley there are five
4 sub-surface pathways which communicate with the Colorado River.
5 No important resources? The Colorado River supplies water to 23
6 million people.

7 I would like him to make that statement to the
8 people of the City of Needles and to the five Indian tribes who
9 live in that area, who fought against this dump, and many of you
10 have heard from these Indian tribes because of their concerns.

11 And It's also a statement that it's appropriate
12 to put nuclear waste dump in land that has been designated
13 critical habitat for an endangered species by the U.S. Fish and
14 Wildlife Service.

15 Ms. Earley used her position in the Cal Rad Forum
16 to make alarmist statements about how medical research and
17 treatments would be adversely affected if California did not
18 open the Ward Valley dump, manipulating public opinion through
19 fear to push the dump project forward.

20 The Cal Rad Forum vigorously opposed SB 2065,
21 passed in 2001, which, as Senator Bowen mentioned, requires the
22 Department of Health Services to conduct an annual survey. We
23 do not have a current annual survey of all the low-level
24 radioactive waste that's generated, stored, and shipped in
25 California. And a stakeholder process, I mentioned the
26 Atkinson Committee, in the stakeholder process, everybody
27 agreed: Before you're going to develop a policy, you have to
28 have this baseline information.

1 And by the way, SB 2065 was completely vetted by
2 the precursor to the current office of Homeland Security, which
3 was the State Security Committee on Terrorism. And when Cal Rad
4 came forward and opposed SB 2065, they said it would be costly
5 and burdensome.

6 Officials in the California Office of Homeland
7 Security and the California Highway Patrol have agreed, this
8 information is essential for homeland security and for the
9 safety of our first responders.

10 So why did Cal Rad oppose this important piece of
11 legislation? Because, as they asserted for years and years at
12 Ward Valley, they continue to hide behind the so-called
13 "hospital gowns and booties" for these dumps. That's their
14 characterization of the waste stream, when the fact is, the vast
15 majority of the waste in the low-level radioactive waste stream
16 from California comes from nuclear power plants. And that is
17 the agenda.

18 There are safer and more responsible
19 alternatives: Source reduction; recycling; on-site monitored
20 retrievable storage facilities that are designed not to leak.
21 And, as the Atkinson Group recommended, California's biotech
22 industry can work together to find a central location to develop
23 such a facility. Nuclear power plant and reactor waste should
24 be stored on-site in a highly engineered facility that can be
25 protected from sabotage.

26 If you confirm these two today, I suggest that
27 you also begin raising the funds to deal with the astronomical
28 cleanup costs associated with a shallow landfill for radioactive

1 waste and the lawsuits from local communities.

2 We need balance and the best science,
3 uncontaminated by corporate influence on the Commission. We
4 need respected individuals with a proven track record of
5 dedication to public health and environmental justice.

6 As Senator Perata said in the previous hearing,
7 we have to go on their past performances. I ask you to look at
8 what they have done, what they've said, who they represent, and
9 reject these two.

10 Thank you very much.

11 CHAIRMAN PERATA: We have three minutes remaining.

12 MR. YOUNG: Okay.

13 I am Ward Young, also Co-Director of the Bay Area
14 Nuclear Waste Coalition. I'll make my comments brief.

15 The Rules Committee and Legislature should not be
16 pressured into approving nominees based on a false notion that a
17 crisis is soon to exist in the disposal of low-level radioactive
18 waste once the Barnwell Dump closes. Barnwell is the only site
19 in the nation, as you have heard, that accepts Class B and C
20 waste from California.

21 But the amounts of B and C waste sent to Barnwell
22 for medical and academic sources are exceedingly small. For
23 example, in 2004, all medical generators in California sent
24 one-fifth of one 55-gallon drum of B and C waste to Barnwell.
25 And in 2003, one-twentieth of a 55-gallon drum. In 2004, all
26 academic generators in California together sent one drum of
27 Class B and C waste to Barnwell, and the same, one drum, in
28 2003.

1 Ms. Earley has stated that medical research and
2 treatment is threatened by Barnwell closing, but this is
3 contradicted by the facts according to the Department of Energy
4 web site.

5 We need Commissioners -- but who does generate B
6 and C waste, which industries? You heard earlier that the
7 Atkinson Committee took an estimate of the amount of plutonium
8 that would go to Ward Valley. Plutonium is a low-level waste,
9 yes. Plutonium is included in the low-level waste stream, and
10 it is generated along with cesium and strontium, and other
11 long-lived radionuclides at nuclear power plants, military
12 reactors, and reactor design firms.

13 We need Commissioners who will commit to seeking
14 monitored retrievable storage for the highly radio active and
15 long-lived waste from commercial and military reactors and
16 reactor designers. This is why the Legislature passed AB 2214
17 in 2002, which the Department of Health Services still has not
18 implemented.

19 Similarly, we had need Commissioners who advocate
20 for a thorough annual survey of LLRWs generators in California,
21 SB 2065, also passed in 2002, and also still not implemented by
22 the Department of Health Services.

23 Thank you.

24 SENATOR BATTIN: Thank you.

25 I think that's all the time for both sides. If
26 you could just identify yourself.

27 MS. ARGUELLO: I'm with Physicians for Social
28 Responsibility. I'm here on behalf of our Executive Director,

Jonathan Parfry, to oppose both of these nominees.

My name is Martha Arguello.

MS. WILLIAMS: I am Jane Williams, California Communities against Toxics.

My members are also very opposed. Sorry they could not be here today. But the five lower Colorado River tribes are all my members, and they have fought very hard to stop the radioactive waste at Ward Valley and will continue to.

Thank you.

MS. JAHAGIRDAR: Sujatha Jahagirdar with Environment California.

Due to concerns regarding credibility and the financial risk involved with the State of California, we oppose these two nominations.

SENATOR BATTIN: Thank you.

MS. BASSEIN: Susan Bassein, Green Action for Health and Environmental Justice.

We were formed in part to fight the proposed dump at Ward Valley, and we will do so again whenever it's necessary.

SENATOR BATTIN: Thank you.

I was out, so all the Members have asked questions or had comments? Yes.

Do we have a motion?

SENATOR ASHBURN: Motion.

SENATOR BOWEN: Which nominee?

SENATOR BATTIN: You want to do them separately.

Okay, we will do Donna Earley, motion on Donna

1 Earley.

2 Secretary, please call the roll.

3 SECRETARY WEBB: Ashburn.

4 SENATOR ASHBURN: Aye.

5 SECRETARY WEBB: Ashburn Aye. Bowen. Cedillo.

6 Battin.

7 SENATOR BATTIN: Aye.

8 SECRETARY WEBB: Battin Aye. Two to zero.

9 SENATOR BATTIN: We'll put that on call. The
10 Chairman stepped out.

11 [Thereafter, SENATOR PERATA
12 voted Aye, making the final
13 vote 3-0 for confirmation.]

14 SENATOR BATTIN: Motion on Mr. Tripodes. Please
15 call the roll.

16 SECRETARY WEBB: Ashburn.

17 SENATOR ASHBURN: Aye.

18 SECRETARY WEBB: Ashburn Aye. Bowen.

19 SENATOR BOWEN: No.

20 SECRETARY WEBB: Bowen No. Cedillo. Battin.

21 SENATOR BATTIN: Aye.

22 SECRETARY WEBB: Battin Aye. Two to One.

23 SENATOR BATTIN: Please put a call on that.

24 [Thereafter, SENATOR PERATA
25 voted No, making the final
26 vote 2-2 for confirmation.]

27 SENATOR BATTIN: While we're at it, could we lift
28 the call on Cynthia Tuck.

1 SECRETARY WEBB: Battin.

2 SENATOR BATTIN: Aye.

3 SECRETARY WEBB: Battin Aye, motion fails, two to
4 three.

5 SENATOR BOWEN: Just to clarify, the nomination
6 moves to the Floor with the recommendation of two in favor and
7 three opposed; is that not correct?

8 SENATOR BATTIN: That's my understanding of what
9 we're going to do.

10 SENATOR BOWEN: Thank you.

11 [Thereupon this portion of the
12 Senate Rules Committee hearing
13 was terminated at approximately
14 5:30 P.M.]

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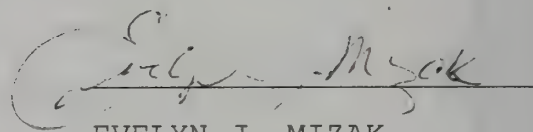
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of September, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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JUL 13 2005

Mary Ann Lutz
1100 Briarcliff Road
Monrovia, CA 91016
(Bus.) 626-303-1113

Nettie Sabelhaus
Senate Rules Committee
Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

FAX: (916) 445-0596

RE: Confirmation Process for Regional Water Quality Control Board Appointment -
Responses to Senate Rules Committee Questions

Dear Ms. Sabelhaus,

Below please find the responses for questions posed in your letter of June 16, 2005.

Statement of Goals:

1) Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the board?

My overarching goal—and responsibility—as a board member is to protect water quality throughout Los Angeles and Ventura Counties. For water bodies which are degraded, my primary intent is to facilitate the timely, effective but economical restoration of water quality so that the beneficial uses designated in the Board's Basin Plan can be realized.

My appointment category is "Municipalities." Subsequently, my objective is to carefully research and communicate—advocate, if you will—the viewpoints and concerns of local government as it pertains to protecting and restoring water quality. I very much hope that by doing so, I can improve not only the understanding, interaction and cooperation between the Board and local government but the quality and implementation of water quality regulations, policies, programs and permits.

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As a business owner and former board member of the Monrovia Chamber of Commerce, I am familiar with the significant impact that environmental regulations can have on the private sector, in general, and small businesses, in particular. As a board member, I hope to include in Board deliberations a consideration of the potential disruptive or harmful consequences a water quality standard or permit requirement could have on the business community.

State/Regional Board Roles

2) What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?

My experience since January 2005 has been that there is minimal contact between state and regional board members, other than when the state board liaison attends regional board's regular monthly meetings. It is my understanding that this is to protect the integrity of the appeal process.

Following my nomination to the Board, senior staff met with me to provide an overview of the Board's mission, jurisdiction and procedures. At this time, I was given a copy of the Board's orientation manual and Basin Plan. Subsequently, I have met with staff several times to learn more about regional water quality issues and regulations. During each meeting there was plenty of time for questions and answers.

Board staff provides each board member a comprehensive agenda package prior to each Board meeting. The package includes an in-depth description of each agenda item, background information, scientific information, staff recommendations, public notices, public comments and responses from staff. At the board meeting staff provides a detailed presentation that generally includes a PowerPoint presentation on each agenda item. The board also has the ability to ask questions of both staff and members of the public who have made comments during the public hearing.

On occasion I have asked to meet with staff for clarification on specific agenda items prior to a Board vote. I have found staff to be responsive and always willing to discuss and explain any item to me.

I have also found my fellow board members to be very responsive and willing to offer their understanding of issues.

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3) Do you have any suggestions how they might better assist you?

Each year the Board attends a retreat to identify and establish annual priorities and goals. It would be helpful—and greatly assist with achieving regulatory consistency and coordination—to have state board priorities and goals shared with the regional board during its annual retreat and, as appropriate, throughout the year.

4) What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

As an elected City Council, I am very familiar with the Brown Act and, in particular, the aspects of conflict of interest. Following my nomination to the Board, I was provided a copy of the Bagley-Keene Act. I along with the other new appointees have met with Regional Board counsel as well as Phil Wels from the Office of Chief Counsel to review its provisions and discuss how they apply to board member conduct and decision-making.

Being an elected representative of a city that holds a NPDES permit, I often ask Board counsel to advise me on situations that could suggest or create a conflict of interest. I know that when an item that directly relates to my city comes before the board I must recuse myself. I have no hesitancy asking for Board counsel's direction when I am faced with a situation or decision that is not black or white but some shade of gray and a potential violation of the Bagley-Keene Act.

To date, I have not had to recuse myself from a Board vote. However, I have had to excuse myself from closed session discussions regarding lawsuits involving the city in which I am an elected official.

5) What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so how?

I understand that to protect and maintain the integrity of the appeal process there is minimal interaction between the state and regional boards. However, I also understand that there is a biannual meeting of the state and regional board members to discuss overarching issues, priorities and goals. During my six-month tenure, a biannual meeting has not occurred or been scheduled. To facilitate consistency and

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coordination between the boards, I recommend that they meet regularly and perhaps more often than twice each year.

Recently when the board agendaized a metal TMDLs we learned through public comment that the State Board had discussed and commissioned a study relating to this item. It seems to me that it would have been helpful to our Board to have had that information prior to the hearing. So, I do feel that there needs to be more timely communication and information between the two boards, particularly as it relates to research items and issues that our board is discussing.

6) Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the board's grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?

You indicated in your question there have been some concerns from grantees and contractees regarding the board's grant and contract procedure. I too feel this is an area where some efficiencies could improve the process. While there have been some changes in the past couple of years that assist in expediting the selection and award process it still needs to be streamlined. Often it takes a year or more before funding is announced and forwarded. We need to find ways to award these grants in a timely fashion so that these projects can make a difference in our water quality sooner.

I'm also concerned with the qualifications for propositions and grants. There is concern that competitive grants that are not already specific in their solicitation are evaluated with extra weight given to proposals that include new water quality improvement ideas, for example, new wetlands or ad hoc studies. Proposals containing programs for water quality that assist in meeting the standards of permits or TMDLs, which can cost the permittees large sums of money, are not looked upon as favorably as those proposals that are for new projects over and above current standards. With each regulation that is handed down and permit that is approved there is a cost involved to either a business, county or municipality, and it is my opinion that our grants should be open, and equally evaluated to assist in all projects that improve water quality, whether it is in relation to TMDL regulations, meeting permit standards, or

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a new water quality improvement study that exceeds current regulations. After all, the goal should be to improve water quality in any way possible and assist those individuals financially who are willing to take on projects.

7) Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

At this point I believe that the Regional Board does its work in an open manner through our public meetings and study sessions. I have seen requests for information from permittees and/or other agencies that are answered in an efficient and timely manner.

Nonetheless, there is always room for improvement. Based on comments made by the public, attention might be given to increasing the length of time for individuals to review and comment upon staff proposals along with the length of time between the issuance of staff's response to public comment and Board decision-making. On principle, I support any proposal that would increase the transparency and, in turn, credibility, of Board decisions.

8) Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

In a word, no. Budget cuts have impacted our region and staff. Our staffing levels have been significantly reduced (more than 30 positions since 2001) and yet the work load has increased, complexities of water standards increase, the number of regulated facilities continues to increase. There has been a prohibition against hiring for the few open positions our board did have and only in the last few months were we able to fill the vacancies.

Our board has continually requested that the state board reexamine the allocation of funds to more accurately reflect the work loads and programs that continually increase. While there has been some relief—recently the Board has been allowed to fill a number of staff vacancies—it has not been enough.

There is also a need for funding increases in the enforcement programs. Again, the work load has increased without funding. CalEPA has established a target of 15% of program resources to be allocated for enforcement purposes while our region has only been allocated 2.5 PY

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dedicated funding for enforcement. This forces us to reorganize our staff and pull resources from other programs - robbing Peter to pay Paul - to keep our commitments in enforcement,.

As the Board "spokesperson" for local government and as a municipal official, I am very concerned that the inadequacy of Board funding will result in local government being required to foot the bill for studies, monitoring, enforcement, etc. Neither county nor municipal government can finance these tasks at this time or in the foreseeable future.

Water Quality Permitting

9) Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for beneficial uses. Would numeric limits in permits provide more consistency, accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

Water quality is a complex issue, full of nuances and tiny variations. There is no "one size fits all" solution that will universally protect and restore water quality. I believe that the Board needs to remain flexible, to consider a diversity of strategies and to select the tools which are the most appropriate and realize a balance between potential benefits and actual costs, especially to local government and the business community.

The use of Best Management Practices (BMPs) has been effective for many years, primarily for storm water permits and due to the unpredictability of rainfall quantity, frequency and intensity that results in polluted runoff. In 2000 federal policies continued to authorize BMPs for permits even after TMDLs had been adopted. My concern is that numeric effluent limits are too rigid and put unreasonable and insurmountable pressure on permit holders to develop and fund strategies to meet them, even in the face of a 100-year storm. In my opinion there needs to be more research as to the threshold for numeric limits for different levels of storms that the permit holders will be required to meet.

Numeric limits are valuable in that they facilitate the collection and evaluation of water quality data. However, by establishing numeric limits, you create a situation where a permit holder either meets the number or not and is penalized or not, despite the fact that the tools or resources necessary to meet the limits may not exist or otherwise be available.

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10) Please explain your views on whether storm water permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Numeric limits can more effectively monitor the success of meeting the clean water standards and there are sufficient data and information to develop the criteria, but it does not address the issue of how to achieve the number. In the Los Angeles/Ventura region, BMPs have been used to achieve the standards, while there has been some progress it is clear that these measures have not made sufficient changes.

The BMPs have not been assessed nationally or locally for their effectiveness. It is apparent that municipalities and industry have not been able to optimize their use. This may be due to a lack of knowledge of the various kinds, understanding of how to use them. An example is porous pavements. While it has been suggested that this BMP will be successful it is unclear how to work with the substance, how to put it most effectively into plans, what is the best way to optimize its potential. Unfortunately, some municipalities and industry find these questions and problems overwhelming and don't utilize these BMPs because they don't understand the concepts or have the personnel, or resources to find the answers. Thus, the level of implementation is uneven and the results disappointing.

Before we attach a numeric figure to a goal that can't be met now with the existing tools and BMPs I would like to see a greater level of cooperation between agencies, boards, scientists and permittees that would evaluate and share successes and challenges of BMPs to work as a team to succeed in the goals of water quality.

Enforcement of Water Quality Laws

11) Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor staffs enforcement practices?

Board staff is amazing in its dedication to enforcing water quality laws. Staff continually identifies ways to improve the efficiency, effectiveness and reach of enforcement programs. In some respects they are like kids in a candy store. However, staff's efforts are severely limited by the absence of needed resources.

Many Board programs include an enforcement prioritization list. The list is monitored by the regional executive management team. Staff is piloting a standardized, structured compliance inspection process that will facilitate enforcement. Staff is working with local, state and federal agencies and participating in several task forces that refer cases to state and local government prosecutors. Additionally, staff is working with the state board on standardizing permits to insure consistency and clarity in enforcement-related provisions..

The Board is provided briefings and written updates on enforcement activities during its regular monthly meetings. Confidential enforcement matters, of course, are discussed in closed session. Each enforcement hearing panel includes at least two board members. Panel recommendations are presenting to the Board during its regular monthly meeting. Other than mandatory penalties, the Board must approve a fine before it can be assessed. Likewise, the Board must review and approve time schedule orders (TSOs) and cease and desist orders (CAOs) prior to incorporation into permits.

Water Quality Monitoring

12) Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

Region 4 is very large, includes 10 distinct watersheds, and is heavily urbanized and industrialized. In order to conduct water quality monitoring in each of its watershes, the Board is using SWAMP (Surface Water Ambient Monitoring Program) funds. Sampling is done once every five years on a rotation basis. In order to more regularly and thoroughly monitor water quality, to improve monitoring coordination and accuracy, to conduct trace metal and trace organic analyses and, in turn, achieve SWAMP objectives, the sampling program would require more than \$100 million per year. The funding level for the past five years has been approximately \$3.5 million. A higher level of funding is required.

In order to better meet the needs the region, the Board been working with stakeholders to develop integrated watershed monitoring programs. The Board coordinates SWAMP monitoring with TMDL and NPDES discharger self-monitoring programs. The Board also integrates storm water discharger monitoring programs, grant-funded programs, agriculture waiver monitoring programs, volunteer programs and other local efforts to

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improve efficiencies. Through these methods the Board has able to increase the scope of regional monitoring studies. Ultimately the success of this approach has been limited by the fact that some programs have specific objectives to satisfy, many of which are too focused and resource-intensive to allow additional monitoring studies. While this can bluster monitoring it is not the answer to the large funding shortfall faced by SWAMP.

13) SB 72 (Kuehl, 2001) requires standardized storm water monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of storm water and storm water control measures. How is your board complying with SB 72 to standardize storm water monitoring?

The LA Water Board staff took a leading role in developing a model standard municipal storm water monitoring program under the auspices of the Storm Water Monitoring Coalition (SMC) with a grant from the State Water Board. The SMC is a partnership of the Southern California Municipal Storm Water Programs and the San Diego, Los Angeles, and Santa Ana Region Water Boards with the Southern California Coastal Water Research Project (SCCWRP) to foster storm water research and develop solutions to mitigate storm water pollution. Through this program SMC's work product for municipal storm water monitoring standardization included a standard storm water monitoring program, a standardized interlaboratory calibration protocol, and a standard data transfer format for data sharing, which were submitted to the State Board in April 2003. Future municipal storm water permits issued by the LA Water Board will incorporate the standard storm water monitoring and reporting programs developed by the SMC.

Staff was awarded a competitive grant from the U.S. Environmental Protection Agency to review the quality of the industrial storm water monitoring. Professor Michael Stenstrom at the University of California, Los Angeles (UCLA), performed the data analysis under contract with the LA Water Board, and provided recommendations in a Report submitted to the State Board in January 2005. Future industrial storm water permits issued by the LA Water Board will reflect the recommendations made by UCLA.

Cleaning up Impaired Waters

14) What specific steps do you support to get your regional board on schedule in identifying Impaired waters and developing pollution loads that will lead to expeditious cleanup?

The Board has aggressively assessed regional water bodies on a regular basis. In 1998 our 303(d) list represented approximately 50% of polluted water body listed segments for the entire state. We have solicited and complied information from a diversity of interests that conduct water quality monitoring, including stakeholders environmental organizations and other regulatory agencies. The Board has developed pollutant loads and clean up programs in its TMDL program with the goal of assisting water quality standards.

In order to realize remediation through TMDLs, the Board has adopted the following strategy:

- Monitor storm water runoff to better characterize pollutant loadings throughout the storm event. Monitoring includes analysis of both water column and sediment loads.
- Convene a stakeholder wet-weather task force to develop recommendations on optimum sizing of BMPs in terms of storm volume, short-term storm intensity, or both storm volume and storm intensity. The task force will work with data developed by the Southern California Coastal Water Research Project (SCCWRP) and look at storm water loading beyond the event mean concentration values. The task force will also review the relationship between suspected and settleable solids in storm water discharges with pollutant loadings.
- Require rigorous testing of BMP effectiveness for various storm sizes. This is a very timely project that is needed due to the numerous TMDLs being considered currently by the Board. The more expeditiously we can work with stakeholders regarding the TMDLs and evaluate BMP effectiveness the faster we will reduce pollutants.

15) What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, would you ensure that they meet this responsibility?

Existing TMDLs provide implementation schedules for meeting interim and final waste load allocations. When a particular implementation

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strategy seeks additional benefits (e.g., greater water supply, creation or restoration of wetlands, etc) additional time may be provided in recognition of its greater complexity.

Other programs which have a role in implementing identified pollution loads include the Municipal Separate Storm Sewer System (MS-4) Industrial and Construction Storm Water Permit; and, in areas where irrigated agriculture is a major nonpoint source, the Conditional Waste Discharge Requirement Waiver for Irrigated Agriculture (Ag Waiver).

The key to achieving a successful monitoring and implementation program is to involve all interested stakeholders, including local government and the business community. A few of the entities that have been involved and that have made significant contributions include the County of Los Angeles, the City of Los Angeles, and the Calleguas Creek Watershed Management Plan Committee. Regarding the Ag Waiver, participants include the Ventura County Farm Bureau and numerous agricultural associations. I strongly encourage the participation of all stakeholders in the development of monitoring and implementation programs.

The Board will be re-assessing points and reviewing progress reports as indicated in the adopted TMDLs. There may be some TMDLs that are revised based on the progress reports or on new information, such as the Santa Monica Bay and Marina del Rey Bacteria TMDL, this may also include extending the implementation schedule from the existing 10 years should there be a demonstrated cogent and well-supported integrated waster resource approach provided.

To ensure that the TMDL waste allocations are attained the board can approve permits that provide safeguards by making sure that the permit conditions are enforced. When the permit conditions call for BMPs this become particularly important. Monitoring the permittees will be key.

Perchlorate

16) What is the extent of Per chlorate contamination in your board's region? How has it impacted drinking water supplies?

The region has reported detections of two or more of perchlorate above SDHS Action Level (AL) of 6 Micrograms per liter in 143 drinking wells in Los Angeles County which consist of 40 drinking water systems, and 4 in Ventura County.

Economically the impact could be significant. Conventional water treatment systems are unable to remove perchlorate and if the wells cannot be used for drinking the water will have to be replaced and the options are limited. We may have to resort to purchasing imported water at an elevated cost or treating the water to remove perchlorate. Both are very costly. Should the water need to be imported the cost could be as much as \$460 per acre-foot versus the local supply rate of \$100 per acre-foot. Removing the perchlorate poses additional costs and challenges. Ion exchange treatment technology can add an additional cost of \$125 per acre-foot in addition to current treatment costs.

17) What is your board doing to address the problem? What types of monitoring and groundwater treatment have been ordered?

Since 1997, the Board has taken action to identify and eliminate sources of perchlorate contamination. Board milestones include:

- 1997 to 2002. The Board identifies potentially responsible parties (PRPs) for the San Gabriel Valley Federal Superfund Site and directs PRPs to sample and test for perchlorate as well as for other emerging compounds.
- 2000. Board directs Boeing (Santa Susana Field Lab) and Ahmanson Ranch to sample and test for perchlorate.
- 2002 and forward. Board adopts standard requirements for sampling and testing for perchlorate as well as for other emerging compounds. Board adopts standard requirements for remediation.
- 2003 and forward. Board requests 433 NPDES permit holders to sample for perchlorate contamination. Board establishes the Perchlorate Public Advisory Group (PPAG). PPAG's mission is to
 - 1) provide an informal forum for the exchange of information about

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perchlorate, its impact to surface and ground waters, and contamination control and remediation technologies and 2) provide participants with information that will help when developing, coordinating and implementing strategies to prevent, identify, control or remediate surface and ground water pollution. Board adds to its web site information about perchlorate.

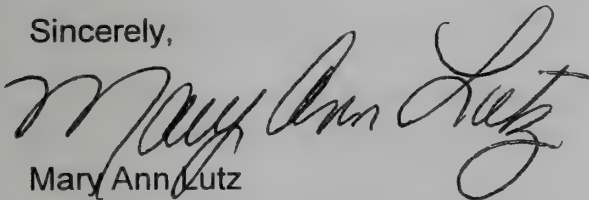
In partnership with the US Environmental Protection Agency, the Board is working to install water treatment plants to remove or reduce the following contaminants from the San Gabriel Valley Federal Superfund Site: perchlorate, VOCs, semi-volatile organic compounds, various emergent chemicals (1,4-Dioxane and N-Nitrosodimethylamine {NDMA}) and inorganic compounds, including nitrates, phosphates, and Chromium VI. The following is a list of treatment plants that have been built and are in operation:

- Valley County Water District Plant (La Puente)
- Monterey Park Plant (Monterey Park)
- Cal Domestic Plant (Whittier Narrows)
- San Gabriel Valley Water District Plant (Baldwin Park)
- Valley County Water District (Baldwin Park)

Additionally, the Board is currently involved in remediating two very large facilities with perchlorate contamination: the Areojet Site in Baldwin Park and NASA/JPL Site in La Canada.

Should you find that you need any additional information please feel free to contact me at (626) 303-1113 or email at maryann@lutz-co.com. Thank you for your consideration of my appointment.

Sincerely,



Mary Ann Lutz

**CINDY TUCK's RESPONSES TO
QUESTIONS FROM THE SENATE RULES COMMITTEE
August 29, 2005**

QUESTION 1

**What are your goals and objectives as Chair of the Air Resources Board?
What specific policies are you promoting to maintain the board's tradition as a leader and pacesetter in clean air policy?**

A. Goals and Objectives

The Air Resources Board is internationally renowned as a leader for its work in improving air quality and protecting public health. The Board excels in the areas of effective program development, sound science and technological innovation. As Chair of this august Board, my goals and objectives are as follows.

- 1) Maintain and enhance the Board's tradition as a leader and pacesetter in effective program development, sound science and technological innovation
- 2) Maintain and enhance the Board's work to attain the federal and state ambient air quality standards
- 3) Maintain and enhance the Board's work to reduce toxic air contaminant emissions, exposure and health risk
- 4) Integrate environmental justice into all of our programs, policies and regulations
- 5) Provide strong enforcement of our programs
- 6) Work with the Administration, the Legislature, Cal/EPA, the CEC and other agencies to show continued leadership in addressing climate change
- 7) Advance our research program to continue to provide a solid technical and policy foundation for new programs
- 8) Provide for fair and meaningful public processes and respectful communications with all interested parties and stakeholders
- 9) Effectively advocate for California's clean air resource and policy needs with Congress, US EPA and other federal agencies

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- 10) Work in a constructive partnership with the Legislature and regional and local air districts to improve air quality for all citizens of California
- 11) Be aware of potential multi-media and children's environmental health issues and work with Cal/EPA and the other Cal/EPA Boards, Departments and the Office of Environmental Health Hazard Assessment to address multi-media and children's environmental health issues
- 12) Continue to make ARB a positive place for our staff to work

B. Specific Policies

Following are the specific policies that I am promoting to maintain the Board's tradition as a leader and pacesetter in clean air policy.

- 1) Implementation of the Governor's Environmental Action Plan (please see Question 2)
- 2) Implementation of the State Implementation Plan and the Board's Diesel Risk Reduction Plan (please see Questions 2 and 3)
- 3) Development of a Comprehensive Emissions Reduction Plan as part of the Goods Movement Action Plan (please see Question 4)
- 4) Continued emphasis on the advancement of clean air technology – including the advancement of the hydrogen highway
- 5) Implementation and defense of ARB's greenhouse gas regulations and participation in Cal/EPA's development of climate change policies as part of the Climate Action Team
- 6) Continued commitment to environmental justice as new programs and policies are developed and existing programs are implemented

QUESTION 2

The Governor's Environmental Action Plan states that the Administration will reduce air pollution emissions by 50% by 2010. What specific measures are you and the Board taking to implement the plan? Please specify the emission reductions from each measure and how the measures reach the Governor's stated objectives.

A. Introduction

The "Cut Air Pollution Statewide by Up to 50%" initiative is one of the most important and most ambitious elements of the Governor's Environmental Action Plan. I am committed to implementing this element. Multiple rulemakings, creative incentive programs like the Carl Moyer program, supportive policies in the transportation and energy sectors, and a strong partnership with the federal government are needed to achieve this goal. I have summarized the four core measures of our strategy below and would be pleased to provide more information to the Committee.

B. An Overview of Challenges

Many challenges face California as we implement this element of the Action Plan. It took 20 years to cut California's peak ozone levels in half (from 0.36 ppm in 1985 to 0.18 ppm today). For ozone, the next increment of progress will be more difficult to obtain because all of the "easy" and obvious steps have been taken. Particulate matter (PM) is a relatively new challenge and is complicated to control given the wide variety and nature of PM sources. We need an unprecedented level of federal cooperation because 30% of the State's remaining nitrogen oxide emissions (a combustion product and ozone precursor) comes from emission sources under U.S. EPA jurisdiction and more than 60% of diesel particulate exhaust is from national or international mobile sources. Finally, greenhouse gas emission reductions are now also on California's list of top priorities, and they pose their own unique challenges.

C. Measures: 4 Distinct Efforts

Despite these great challenges, the Air Resources Board is well positioned to identify and implement the comprehensive strategies needed to achieve the air pollution reduction goal under the Action Plan. As described below, there are four separate broad measures underway to define the path ahead.

First, the 2003 **State Implementation Plan (SIP)** for the South Coast Air Quality Management District (2003 SIP) provides a blueprint for several years of regulatory work on ozone precursors and particulate matter emissions. The 2003 SIP is designed to achieve a 50 percent reduction in ozone forming emissions by 2010 through a combination of federal, state, and local measures. The SIP shows how the emission reductions needed for attainment will be achieved from a mix of adopted measures, measures under development from 2003-2006, and measures to be defined in 2007-2008. The state element of the 2003 SIP lists 19 measures to be developed by ARB. Attachment 1 presents this list and the corresponding expected emission reductions. Attachment 2 lists potential regulations that the Board plans on considering in the 2005-2006 timeframe. More information is included in my response to Question 3 below.

ARB and the District will be updating the SIP in 2007 to address new, more stringent federal standards for ozone and PM. The San Joaquin Valley plan will be updated in the same time period, adding additional Valley-specific strategies to the mix. (All other federal nonattainment areas in California must prepare SIP updates in 2007-2008, but they are not expected to alter the contours of ARB's overall attainment strategy which will be based on the needs of the most severely polluted areas - the South Coast and the San Joaquin Valley.)

Second, ARB's comprehensive **Diesel Risk Reduction Plan**, adopted in 1999, commits the State to 75% diesel PM emission reductions by 2010, climbing to 85% by 2020. Since 2003, ARB has adopted six new regulations affecting approximately 10% of the diesel engines in the state (i.e., approximately 120,000 of an estimated 1.2 million diesel engines). The new regulations address: 1) trash trucks; 2) transportation refrigeration units; 3) portable engines; 4) stationary engines; 5) heavy duty vehicle idling; and 6) locomotive and harbor craft fuel requirements. ARB has eight more diesel rulemakings scheduled through the end of 2005, 2006 and 2007 which will address approximately an additional 60% of the State's diesel engine inventory. These new rulemakings will address: 1) public and utility on-road fleets; 2) cargo handling equipment; 3) marine vessel auxiliary engine fuel requirements; 4) on-road fleets in private ownership; 5) off-road mobile sources; 6) harbor craft retrofits and accelerated retirement; 7) stationary agricultural engines; and 8) off-road agricultural mobile sources. For each rule, ARB's guiding principle is the ultimate target of 85% emissions and risk reduction by 2020, which ARB has achieved in almost every instance so far. Please see Attachment 3 for a listing of the approved and future measures under this effort and the corresponding estimated emission reductions for the approved measures.

As the Legislature knows, incentive funds such as the **Carl Moyer** program and **Clean School Bus** program are vitally important to our overall diesel clean up strategy. These funds assist ARB and local air districts in reaching diesel engines that are less amenable to regulation (i.e., approximately 5-10% of the inventory). The incentive funds also spur early compliance for regulated engines, accelerating the progress toward cleaner air and greater public health protection. Finally, the incentive dollars enable us to prove leading edge technologies.

Third, ARB is working with Cal/EPA and the Business, Transportation & Housing Agency on a comprehensive **Goods Movement Action Plan**. In addition to identifying California's infrastructure needs, this two-part plan will identify the pollution control strategies needed to abate the emissions impact of shipping, rail transport, cargo handling and on-highway trucking associated with the explosive trade growth that our State has already experienced and that which is forecasted for the future. A substantial portion of those strategies will be aimed at national and international sources since they are the largest contributors to goods movement related pollution. ARB is already taking steps to implement portions of the ultimate plan, such as the cargo handling regulations and marine auxiliary engine fuel requirements scheduled for Board consideration in November 2005. Depending on

the Board's action in September, the voluntary agreement recently negotiated by our Executive Officer with two major railroads for risk reduction at rail yards throughout California may also be part of ARB's overall strategy.

Fourth, ARB is a member of the **Governor's Climate Action Team** and is working with all team members on an implementation plan to reach the Governor's greenhouse gas emission reduction targets:

- 1) to 2000 levels by 2010 (i.e., an 11 percent reduction from "business as usual");
- 2) to 1990 levels by 2020 (i.e., 25 percent reduction from business as usual); and
- 3) to 80% below 1990 levels by 2050.

I fully support these targets. Led by Cal/EPA Secretary Alan Lloyd, the California Climate Action Team has already started a public process regarding implementation of the targets. A written report will be provided to the Governor by year's end and released to the public shortly thereafter. In September of 2004, ARB took the critical step for reducing greenhouse gas emissions in California by adopting the regulation pursuant to AB 1493 (Pavley). By 2020, ARB's vehicle standards will make the new car fleet 30% lower emitting on average than it otherwise would have been. This strategy alone should provide more than 20% of the Governor's statewide 2020 goal for greenhouse gas reductions.

QUESTION 3

What is the status of the state's compliance with the State Implementation Plan? What needs to be done to achieve attainment?

A. Background

The attainment needs of the South Coast Air Basin have historically driven ARB's control program due to the severity of the problem in that region. As we transition to new, more stringent federal air quality standards, the needs of the San Joaquin Valley will play an equally important role due to the persistent nature of the Valley's air quality problem. By designing our attainment strategy to address the areas with the worst air quality, we are assured of sufficient reductions to meet air quality standards statewide.

The State Implementation Plan (2003 SIP) for the South Coast is designed to achieve a 50 percent reduction in ozone-forming emissions by 2010 through a combination of federal, state, and local measures. The SIP shows how the emission reductions needed for attainment will be achieved from a mix of adopted measures,

measures under development from 2003-2006, and measures to be defined in 2007-2008.

B. Status

The State is in compliance with the requirements of our most recently adopted State Implementation Plan (2003 SIP) for the South Coast. The state element of the 2003 SIP lists 19 measures to be developed by ARB and one smog check improvement measure for the Bureau of Automotive Repair (BAR). Attachment 1 presents this list and the corresponding expected emission reductions. The SIP also includes annual emission reduction targets. ARB's 2003 and 2004 annual targets have been met. Rules that the Board will consider later this year and in 2006 are expected to provide the remaining reductions. Attachment 2 lists the potential regulations that the Board plans on considering in the remainder of the 2005-2006 timeframe. In total, these measures should provide the 109 tons per day of reductions called for in the 2003-2006 timeframe. These measures will also provide reductions necessary for other SIPs, including the current San Joaquin Valley SIP. The last remaining component of BAR's smog check measure is expected to be in place in 2006.

C. Next Steps

The public process of defining what more is needed for attainment will be addressed as we develop SIP updates that are due in 2007-2008 for the new 8-hour ozone and PM2.5 standards. ARB and the air districts will use the latest California air quality studies to establish emission reduction targets. Then new local, state, and federal measures will be developed to meet those targets. The keys to success will be to continue our work to replace or clean up existing engines, address federally-preempted and international sources (such as many railroad activities and ships), and continue to push for cleaner, more efficient technologies. This public process will begin in mid-2006.

QUESTION 4

Air pollution from "goods movement" is an issue of increasing concern. How do increases from goods movement affect compliance with the State Implementation Plan and achievement of state ambient air standards? What actions do you support to address the health effects of pollution from the movement of goods, especially in low-income neighborhoods like West Oakland, San Pedro and Wilmington?

A. Introduction and Background

Air pollution from goods movement is of serious concern to the ARB. As noted in my response to Question 2, Cal/EPA and the Business, Transportation & Housing Agency are working on a two-part comprehensive Goods Movement Action Plan.

We expect the first phase report to be issued very soon. Part of the first phase report will address environmental impacts and environmental mitigation alternatives. The ARB is staffing this effort for Cal/EPA since the principal environmental impact is air pollution. (The report will speak to other environmental media as well, including water quality.)

B. Effect on Compliance with the SIP and Attainment of the Standards

As explained in the response to Question 3, the State is in compliance with the current State Implementation Plan. Certainly development of the SIP updates will need to take into account and address the increases in emissions in the goods movement sector.

Emissions from goods movement do raise serious issues relative to attainment of the standards. There are two key facts on which to focus. First, the emissions from goods movement activity are already substantial and growing. We absolutely need to turn that around. My understanding is that we will not be able to attain state and federal air quality standards unless we do so. Second, federally-preempted and international sources – in particular, foreign-flagged marine vessels – are the single largest emission source, far outweighing every other goods movement category. As you can imagine, this makes our job particularly challenging since fuel composition standards for international ships can be dependent on the off-shore availability of cleaner fuels, and state standards for engines on these ships pose several unique issues.

C. Support for Actions to Address the Health Effects of Pollution from the Movement of Goods, Especially in Low-Income Neighborhoods like West Oakland, San Pedro and Wilmington

On August 22, 2005, I had the opportunity to tour parts of the Los Angeles Port area and communities adjacent to that Port with Jesse Marquez, the Executive Director for Coalition for a Safe Environment (based in Wilmington), Joe Lyou, the Executive Director for the California Environmental Rights Alliance ("CERA"), and Angela Johnson Meszaros, Policy Analyst for CERA. This tour made a strong impression upon me. There is no substitute for seeing the vast port operations first hand and observing how close the emission sources are to residential communities. (Our tour focused on Wilmington.)

In order to address the health effects from the pollution caused by the movement of goods, and to protect the health of the communities living near the goods movement activities, I support the development of a comprehensive emissions reduction plan as part of the Goods Movement Action Plan. This emissions reduction plan would address emissions from ships, locomotives, trucks and cargo handling equipment used to move goods through California ports. We need to deploy a combination of new regulations and increased incentives to speed the modernization of port trucks and other equipment used to move goods to, from and at port and rail facilities.

As I have already noted, the State's authority to regulate emissions from some goods movement sources, particularly locomotives and ship engines, is limited significantly by federal law (in the case of locomotives) and by the international nature of shipping. That means that in addition to using our regulatory authority, to be successful, we will need to encourage effective action by the federal government and elicit the cooperation of local governments, port officials, ship owners, terminal operators and the railroads.

ARB is already on the mission of reducing emissions from the goods movement sector. As an example, we have already established highly effective regulations to reduce emissions from new trucks and the new engines used in off-road equipment used to load and unload freight. As additional examples, we plan to adopt later this year, in three separate rulemakings, requirements for oceangoing ship auxiliary engines, cruise ship onboard incineration and cargo-handling equipment at ports and intermodal rail yards.

QUESTION 5

Earlier this year, the ARB staff privately negotiated and entered into an MOU with the railroad industry to reduce emissions from rail activities. This MOU, and the process by which it was entered into, is strongly opposed by air districts and environmental and health groups. Do you believe that the process by which it was entered into excluded meaningful public input? What, if any, changes do you advocate to improve the MOU?

A. The Railroad MOU and Public Input

I do believe that the process by which the MOU was entered into did not include meaningful public comment. Our staff entered into the MOU on June 24, 2005. On my first day as ARB Chair (July 15, 2005), there were two large files on my desk. One of the two files consisted of letters from Legislators, various interested parties, and members of the public regarding the MOU. Virtually all of the letters raised strong concerns about the lack of meaningful public input during the development of the MOU. From day one, I have taken these concerns seriously as I am a supporter of meaningful public input in the development of environmental policies and programs.

I also believe that staff's intent in negotiating the MOU was to obtain the best possible agreement on behalf of the citizens of California. ARB has not entered into many MOUs. We rely on MOUs when our legal authority to impose emission reductions by regulation is limited or unclear. Given restrictions under Federal law on the regulation of railroads by the states¹, a voluntary agreement with the railroads

¹ Section 209(e)(1) of the Clean Air Act (CAA) States: "No State or political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from (...) new locomotives or new engines used in locomotives." The U.S. Environmental Protection

enables California to achieve quicker emission reductions and public health protection than would otherwise occur. I also recognize that the voluntary nature of MOU negotiations does not lend itself to incorporation of all of the language that the Board, staff and stakeholders would have preferred. That said, however, staff still could have sought and considered public input during the process.

Based on the concerns about the process, I asked staff during my first week at ARB to conduct two public consultation meetings to explain the MOU and to listen to comments from the public and other interested stakeholders. I also asked staff to schedule a Board hearing so that the Board could receive public comment and take appropriate action on the MOU. Staff held the first public consultation meeting on August 10 in Sacramento. I attended that meeting. Staff will hold the second public consultation meeting on the evening of August 31 in the City of Commerce. The special Board meeting will be held in Southern California during the afternoon and evening of September 22.

B. Course of Action on the MOU – Endorse, Rescind or Seek Amendments

As explained below, I am not advocating changes to the MOU at this point in time. I have not yet decided where I will be on the MOU going into the Board meeting on September 22. The Board's options include, but are not limited to, supporting the MOU, rescinding the MOU, or directing the Executive Officer to engage in further negotiations with the railroads to achieve specified modifications and then report back to the Board for potential ratification.

On Friday, August 19, I met with East Yard Communities for Environmental Justice, Modesta Avila Coalition and other community representatives in Commerce to discuss the MOU and tour a neighborhood which is so close to two enormous rail yards and the 710 freeway. This meeting and tour helped me to better understand community concerns about the proximity of rail yard emissions, cumulative impacts from multiple sources and other concerns such as noise and light issues. In addition to hearing concerns about the MOU, this tour highlighted for me the importance of Cal/EPA's and ARB's work on mitigation under the Goods Movement Action Plan.

Going into the September 22 Board meeting, the Board will be addressing what is a *strong tension* between two factors. First, we want to obtain real, enforceable emission reductions from the railroads statewide as quickly as possible. The railroad MOU does that. Second, we want to have fair and meaningful public processes for informing our decisions. At our September 22 hearing, we will be grappling with this tension and the best decision to protect public health as we consider input from the public consultation meetings, written comments and public

agency clarified the scope of this preemption in its 1998 emission standards for locomotives and locomotive engines to include both new and rebuilt locomotive engines over 133% of their useful lives, effectively ensuring that direct regulation of locomotive engines is the sole prerogative of the federal government. The Interstate Commerce Commission Termination Act also presents significant preemption issues.

testimony at our September 22nd hearing. Directing staff to seek amendments is an option, and I am open to considering suggestions in that area from the Legislature, the air districts and the public.

Some groups, including the groups that I met with on August 19, are commenting that the railroad MOU should be rescinded without any effort to pursue amendments. (They prefer to pursue a legislative strategy and run the risk of litigation by the railroads.) That is one possible course of action which we will consider carefully. This option would, however, allow the railroads to walk away from the agreement.

As to the benefits of the MOU, it gives us the ability to obtain immediate emission reductions from a source that in many respects is federally-preempted. The goals of the agreement are to expedite air quality improvement near rail yards, to expand the community's ability to participate in upcoming risk reduction activities at major yards, and to gain much larger longer-term benefits from the introduction of cleaner locomotives. Its provisions include greater use of low sulfur diesel, smoke inspections and rapid repair for locomotives, installation of automatic idling shut off devices and substantial new idling restrictions, health risk assessments for designated rail yards, and improved rail yard operational practices. The agreement also incorporates enhanced community consultation and communication as additional analyses are completed. Staff has estimated that the new MOU will reduce emissions and public risk at rail yards by approximately 20 percent.

C. Process for Future MOUs

It is important to improve processes for future decisions based on lessons learned. At our July 21, 2005 meeting, I led our Board in the unanimous approval of a resolution that provides that:

- 1) the Executive Officer will notify the Board and the public before commencing MOU negotiations and will solicit public comments regarding the subject of the MOU and provide reports to the Board; and
- 2) any future MOU and any new amendments to an existing MOU must be approved by the Board at a public meeting before they will go into effect.

**2003 Ozone State Implementation Plan
19 Near-Term ARB Measures
(South Coast, tons per day in Summer 2010)**

Note: Based on ARB Resolution 03-22 adopting the 2003 Statewide Strategy on October 23, 2003

Strategy (Agency)	Name	Final Action Date	Imple- menta- tion Begins	Expected Reductions
				ROG+NOx
MED-DUTY-1	Replace or Upgrade Emission Control Systems on Existing Passenger Vehicles	2005	2007-2008	0-40
LT/MED-DUTY-2	Improve Smog Check to Reduce Emissions from Existing Passenger and Cargo Vehicles <i>[Bureau of Automotive Repair Measure]</i>	2002-2005	2002-2006	13.6-14.2
ON-RD HVY-DUTY-1	Augment Truck and Bus Highway Inspections with Community-Based Inspections	2003	2005	0-0.1
ON-RD HVY-DUTY-2	Capture and Control Vapors from Gasoline Cargo Tankers	2005	2006-2007	4-5
ON-RD HVY-DUTY-3	Clean Up the Existing and New Fleets of Heavy-Duty Trucks and Buses	2003-2006	2004-2010	17.4-25.5
OFF-RD CI-1	Clean Up the Existing Fleet of Heavy-Duty Diesel Off-Road Equipment (Used in Construction, Agriculture and Mining)	2004-2008	2006-2010	10.3-17.8
OFF-RD CI-2	Implement Registration and Inspection Program for Existing Diesel Equipment	2006-2009	2010	NQ
OFF-RD LSI-1	Set Lower Emission Standards for New Forklifts and Other Large Gas Equipment)	2004-2005	2007	0.8
OFF-RD LSI-2	Clean Up the Existing Fleet of Forklifts and Other Large Gas Equipment	2004	2006-2012	2.8-6.0
SMALL OFF-RD-1	Set Lower Emission Standards for New Handheld Lawn and Garden Equipment (Like Weed Trimmers, Leaf Blowers, and Chainsaws)	2003	2005	2.1
SMALL OFF-RD-2	Set Lower Emission Standards for New Non-Handheld Lawn and Garden Equipment (Like Lawnmowers)	2003	2007	6.9-9.3
MARINE-1	Clean Up the Existing Fleet of Harbor Craft	2003-2005	2005	2.8
MARINE-2	Reduce Land-Based Port Emissions	2003-2005	2003-2010	0.2
FUEL-1	Set Additives Standards for Diesel Fuel to Control Engine Deposits	2006-2009	2006-2010	NQ
FUEL-2	Set Low-Sulfur Standards for Diesel Fuel for Trucks/Buses, Off-Road Equipment, and Stationary Engines	2003	2006	Enabling
CONS-1	Set New Consumer Products Limits for 2006	2003-2004	2006	2.3
CONS-2	Set New Consumer Products Limits for 2008-2010	2006-2008	2008-2010	8.5-15
FVR-1	Increase Recovery of Fuel Vapors from Aboveground Gasoline Storage Tanks	2003	2007	0-0.1
FVR-2	Recover Fuel Vapors from Gasoline Dispensing at Marinas	2006-2009	2006-2010	0-0.1
FVR-3	Reduce Fuel Permeation Through Gasoline Dispenser Hoses	2004	2007	0-0.7
PEST-1	Implement Existing Pesticide Strategy <i>[Department of Pesticide Regulation Measure]</i>	---	1996-2010	Baseline
Potential Range for Defined Near-Term State Measures				71.7-142
Minimum Commitment Via Adoption 2003-2006				109

Upcoming Regulations for Air Resources Board Consideration**(2005-2006)**

- Measure to reduce fleet emissions from propane and gas powered forklifts and other large gasoline off-road engines
- More stringent requirements to reduce vapors from portable gas containers
- New requirements to reduce idling emissions from new trucks and from sleeper cabs
- Establish protocol for inspections of international trucks (AB 1009, Pavley)
- More stringent requirements to reduce toxic emissions from chrome platers
- New emission controls for cargo handling equipment at ports, rail yards and intermodal facilities
- Measure to require retrofits and accelerated retirement of existing diesel-powered harbor craft
- Requirement to use cleaner fuel in ship auxiliary engines
- Control requirements for onboard incineration on cruise ships
- Diesel PM controls for vehicle fleets that are publicly owned or operated by utilities
- Diesel PM controls for on-road fleets under private ownership such as line haul trucks, fuel tankers, and delivery vehicles
- New consumer product requirements
- Air toxic control measure for formaldehyde in composite wood products
- Diesel PM controls for off-road mobile sources such as graders, sweepers, and other work vehicles
- Require improved vapor recovery for above ground storage tanks
- Establish requirements for replacement catalysts for passenger vehicles

EFFECTIVENESS OF AIR RESOURCE BOARD
DIESEL PARTICULATE
AIR TOXICS CONTROL MEASURES

Category	Adoption Date	PM Reductions 2020
Idling School Buses	2002	Not Estimated
Trash Trucks	2003	85%
Commercial Harbor Craft and Locomotive – Low Sulfur Fuels	2004	14%
Stationary Engines	2004	80%
Truck Refrigeration Units	2004	90+%
Portable Engines	2004	95%
Idling Trucks	2004/2005	81%
Public Fleets & Private Utilities	2005	86%
Cargo Handling Equipment at Ports and Intermodal Rail Yards	Pending Nov 2005	88%
Cleaner Fuels for Ship Auxiliary Engines	Pending Nov 2005	TBD
Stationary Agricultural Engines	2006	TBD
Off-Road Public & Private Vehicle Fleets	2006	TBD
Commercial Harbor Craft – Retrofits (2006)	2006/2007	TBD
Ocean-Going Vessels – Main Engines	2006/2007	TBD
On-Road Private Fleets	2007	TBD
*Values relative to 2000 baseline emissions		

TBD = To be determined during rulemaking

Donna Earley

June 23, 2005

Nettie Sabelhaus
Appointment Director
Senate Rules Committee
Room 420, State Capital
Sacramento, CA 95814

Re: Chairman Perata's letter 6/7/05 SLLRWC

Dear Ms. Sabelhaus:

I would like to submit the following responses to Senator Perata's questions for consideration for the confirmation hearing for my appointment as a member of the Southwestern Low-Level Waste commission.

- 1. What do you hope to accomplish during your tenure as a member of the Southwest Low-Level Radioactive Waste Commission? What goals do you have for the commission and how will you accomplish them?*

As a member of the Commission I plan to work to assure uninterrupted access to safe, secure and economically feasible radioactive waste disposal for all members of the compact. Currently our access is only assured through 2008, though smaller generators may find it impossible to secure space at the existing sites earlier than 2008. California, as the host state under the compact legislation has an obligation to pursue a solution. I am particularly concerned about access for radioactive biowaste and sources (an issue for biotech and medical research), which cannot currently be disposed of in Utah. Impact of the lack of assured access to waste sites results in missed opportunity for research scientists. Without assured access scientists can not even consider protocols that will generate biological radioactive waste. I have suggested that the commission pursue negotiations with Envirocare to consider accepting radioactive contaminated biowaste without treatment. The current method, which requires waste, be sent to Tennessee for treatment and then back to Utah, leaves the generators in California and the other SWLLRWC members at an economic disadvantage to those in the other western states.

There are many options to continue to explore, including urging the federal government to consider the use of existing federal DOD sites, negotiating with other compacts for interim agreements as well as to continue the search for an acceptable disposal site within the compact.

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June 7, 2005
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As a member of the commission I will assist the State of California in evaluating the feasibility of all the options, while making sure that California's interests are addressed by the multi-state commission.

2. *Do you favor repealing AB 2214? If you do, what are the problems you see with restrictions on the siting and operation of a low-level radioactive waste facility contained in AB 2214?*

Any site that is chosen within the Southwest Compact will need to meet all state and federal laws which are designed to protect public health and the environment. The process for identification and characterization of suitable sites is very lengthy and technically challenging. The data and findings from the work to date should be evaluated against the other options the State may choose to pursue to assure that protection of the public and the environment is optimized.

3. *As a commissioner, would you support the siting or operation of a low-level radioactive waste disposal facility that did not meet current state law?*

I would not support the siting or operation of any facility that does not meet all applicable law.

4. *Given the recent GAO report and the University of California's report, what do you believe is the need for additional low-level radioactive waste disposal sites?*

The concern with radioactive waste disposal has never been about capacity, only about assured access. The need for additional low level radioactive waste sites is regional, depending on the assured access of the compacts. The Southwestern Compact, without its own regional disposal site or assured access to another site is at a disadvantage to the rest of the western states. This is especially true for biotech and medical research centers without the physical or financial ability to build safe long term storage facilities. As a result of the lack of facilities, hospitals and biotech centers have to store this material on site – and it's happening now. In addition, space for Class B & C waste as well as sealed sources is only assured until 2008. Without assured access to disposal sites we will be faced with hundreds of onsite storage facilities that may create a higher level of concern.

5. *Could you describe the instructions your commission gave to its counsel to determine the feasibility of taking legal action against the State of California? Would the commission be seeking monetary damages?*

I have only attended one meeting of the commission so I have not participated in prior discussions regarding the concerns by the commissioners from Arizona, North Dakota

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June 7, 2005
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and South Dakota about California's lack of progress as the host state in the compact. The finding in the Nebraska case is not applicable to the SWLLRWC. California did not utilize other compact state funds in its attempt to site a waste facility, utilizing a private vendor instead

The other members of the SWLLRWC requested clarification regarding both California law and the federal compact regulations with regards to their options under the regulation. The non Californian commission members are seeking assured disposal access, I do not believe that monetary damages are a goal. That being said, I believe this points out the need to assure that California continues to hold the majority on the commission.

6. *Do you believe there is any conflict of interest for a person who has lobbied for a specific low-level radioactive disposal facility to sit on the commission that is the governing body for low-level radioactive waste in four states?*

I do not believe that I have a conflict of interest. I have been working toward a safe solution for radioactive waste disposal for 24 years. The location of any waste must meets the needs of the people of California without compromising public health or harming the environment. The people of California have benefited from the use of radioactivity as a source of energy, an industrial tool, diagnostic and treatments in Nuclear Medicine and Radiation Oncology, as well as a hope for our future as a tool for biotechnology and gene therapy. We must find a way to provide environmentally safe disposal of the waste to continue to benefit from its use remain while remaining economically competitive. As a member of the SWLLRWC I will support any solution that allows us to meet that goal.

I thank you for your consideration and request that you contact me if you require further clarification. I look forward to serving the State of California as a member of the southwestern Low Level Radioactive Waste Commission.

Respectfully,

Donna L. Earley
Citizen

James G. Tripodes
4158 Emerson Drive
Livermore, CA 94551
June 24, 2005

[Transmitted via electronic mail and US Postal Service]

Nettie Sabelhaus, Appointments Director
Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814

Re: Response to Chairman Perata's Letter, dated June 7, 2005

Dear Ms. Sabelhaus:

Following are my responses to the questions asked by Chairman Don Perata in his letter to me, dated June 7, 2005, in preparation for the Senate Rules Committee's confirmation hearing on my appointment as a member of the Southwestern Low-Level Radioactive Waste Commission.

1. *"What do you hope to accomplish during your tenure as a member of the Southwest Low-Level Radioactive Waste Commission? What goals do you have for the commission and how will you accomplish them?"*

As a member of the Southwestern Low-Level Radioactive Commission (SWLLRWC) representing California, it is my desire to assist the State in fulfilling all of its responsibilities pursuant to the Southwestern Low-Level Radioactive Waste Disposal Compact law (the SWLLRW Compact), and to protect California's interests in assuring that other SWLLRWC Compact member states fulfill their responsibilities. California's most challenging responsibilities are those related to its role as the host state in providing for the safe disposal of all classes of low-level radioactive waste (LLRW) generated within the region, as defined in the SWLLRW Compact.

The citizens of California receive benefits every day from a wide variety of uses of radioactive materials. Radioactive materials are used in medical diagnosis and treatment procedures, the biotechnology industry, the construction industry, environmental testing laboratories, research in nearly every scientific and engineering discipline, and in the production of electricity. As a result of all of these beneficial uses, some wastes are generated that require disposal as LLRW.

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Nettie Sabelhaus
June 24, 2005

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My primary goal for the SWLLRWC is to help California assure long-term availability of safe disposal capacity for all LLRW classes. I expect that this need for most Class A LLRW can be met indefinitely by maintaining access to the Envirocare disposal facility in Utah. However, the current availability of capacity for disposal of Classes B & C LLRW and a subset of Class A LLRW (primarily sealed sources) at the Barnwell, South Carolina facility is only assured until July 1, 2008. After this date, there will be no disposal facility available for such wastes generated in SWLLRW Compact member states unless:

- (1) continued access to the Barnwell facility can be negotiated with the State of South Carolina,
- (2) new access to a facility licensed by the State of Washington in the Pacific Northwest LLRW Disposal Compact region can be negotiated,
- (3) access to facilities operated for the US Department of Energy can be negotiated, or
- (4) access to a yet-to-be developed facility inside or outside of the SWLLRW Compact region can be made available.

I will assist the State of California in identifying and determining the feasibility of specific options to meet this long-term need. After the State decides which option (or options) to pursue, I will assist with implementation in roles appropriate for a Commissioner. Such assistance could include participation in negotiations with other states or LLRW disposal compact commissions.

2. *"Do you favor repealing AB 2214? If you do what are the problems you see with restrictions on the siting and operation of a low-level radioactive waste facility contained in AB 2214?"*

I have suggested looking at the repeal of AB 2214 as merely one of the options that California might consider when determining how the State could fulfill its responsibility as the host state to provide for the timely development of a permanent disposal facility within the SWLLRW Compact region. Before pursuing this option, a careful evaluation of alternatives would be appropriate. If the State chooses to explore this option, its feasibility would need to be assessed in the context of maintaining the desired levels of protection for public health and the environment. I am willing to help the State evaluate a variety of technical aspects of this option if so desired.

3. *"As a commissioner, would you support the siting or operation of a low-level radioactive waste disposal facility that did not meet current state law?"*

I would not support the siting or operation of any LLRW disposal facility that did not meet all laws applicable to its siting and operation.

Nettie Sabelhaus
June 24, 2005

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4. *"Given the recent GAO report and the University of California's report, what do you believe is the need for additional low-level radioactive waste disposal sites?"*

It is true that sufficient national capacity exists for disposal of most Class A LLRW for several decades, and it is likely that this capacity will remain available to SWLLRW Compact member states. However, the available capacity for disposal of Classes B & C LLRW and a subset of Class A LLRW (primarily sealed sources) is currently only assured for SWLLRW Compact member states until July 1, 2008. If long-term access to out-of-region disposal facilities cannot be assured for all LLRW generated in SWLLRW Compact member states, then additional disposal facilities may be needed.

5. *"Could you describe the instructions your commission gave to its counsel to determine the feasibility of taking legal action against the State of California? Would the commission be seeking monetary damages?"*

I was not present at the SWLLRWC meeting on April 8, 2005 when this subject was discussed and I do not know what specific instructions were given to its counsel at that time. It is my understanding that several SWLLRWC members representing other states, in expressing their concern about California's lack of progress to develop a disposal facility, had questions about options for legal action.

Regarding the subject of the SWLLRWC seeking monetary damages, I think such action is improbable. The judgment against Nebraska was awarded to compensate for substantial costs incurred by the plaintiffs during the site selection and license application and review processes. The SWLLRWC itself has not incurred such costs.

6. *"Do you believe there is any conflict of interest for a person who has lobbied for a specific low-level radioactive disposal facility to sit on the commission that is the governing body for low-level radioactive waste in four states?"*

I believe that I have no conflict of interest. My support for a specific LLRW disposal facility that was selected, evaluated and licensed in compliance with all applicable laws and regulations is congruent with the responsibilities of SWLLRWC members. Indeed, the SWLLRWC consistently supported development of that same LLRW disposal facility to meet the needs of SWLLRW Compact member states.

Nettie Sabelhaus
June 24, 2005

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Please contact me if there are any additional questions or if you need more information prior to my confirmation hearing. I look forward to the Senate's confirmation of my appointment as one of California's members on the Southwestern Low-Level Radioactive Waste Commission.

Sincerely,

Original signed by
James G. Tripodes

Kenny G. Cherng, L.Ac.

August 15, 2005

Senate Rules Committee
Don Perata, Chairman

Honorable Senator Perata:

It is to me a great honor to be a member of the California Acupuncture Board as I possess the vision of bringing quality medical care to the people of California. The questions posed are welcome by me as I am happy to have this opportunity to further articulate my aspirations in regards to my position. Below you will find my replies to the inquiries posed and I hope they assist you in understanding both my respect and hopes for this position.

1. *What are your goals and objectives as a member of the California Acupuncture Board? What do you hope to accomplish during your tenure?*

As an appointed member of the California Acupuncture Board, it is my goal to educate both the acupuncture licensees and the public to the benefits and hazards of acupuncture. In addition, I wish to enforce the current Educational and Continuing Education requirements as based upon the existing statute.

2. *What do you believe is the highest priority of the California Acupuncture Board? How should this be accomplished?*

I believe the highest priority of the California Acupuncture Board should be that of protecting the consumer. This will be accomplished through the cultivation of proper education and the enforcement of current procedures.

3. *The Little Hoover Commission recently stated that the current level of 3,000 hours of training is adequate to prepare incoming acupuncturists and protect public safety. Do you agree? Please explain. Or, do you believe that additional education requirements are necessary? Could they create a barrier to entry into the profession and potentially result in higher charges and fewer choices to consumers? If so, what do you think the board could do to ensure access to the profession and patient access to the providers?*

I agree with The Little Hoover Commissions statement that 3,000 hours of training is adequate to prepare incoming acupuncturists and to also protect public safety as this corresponds with the current practice based upon the statute of the Office of Examination Resources. In addition, from personal observation I conclude as such.

4. *Do you believe that the uneven levels of required training is cause for consumer concern? How can a consumer obtain knowledge of the acupuncturist's training, skills, ability and experience? Is continuing education sufficient to bridge the gap between licensees with fewer hours of training than those with more hours?*

I do not believe uneven levels of required training is cause for consumer concern. A consumer may obtain knowledge of an acupuncturist's training, skills, ability, experience and license status by accessing the Board via telephone or its website. I do believe that continuing education in combination with practical experience will eliminate all gaps for those with fewer hours of training.

5. *In its 2004 Sunset Review Report filed with the Legislature's Joint Committee on Board, Commissions and Consumer Protection, the board outlined actions taken to improve the auditing and accountability of its continuing education program. What is the status of those changes? Are they fully implemented? Are there other steps that should be taken in continuing education courses to further enhance a licensee's knowledge, skills and abilities to protect consumers?*

Board's Response – Taken from the CAB's January 3, 2005 Letter to the Joint Committee's Background Paper (Issue 8, Page 12):

Status of Changes: Fully implemented

B&P Code Section 4945 requires an acupuncturist to complete 30 hours of continuing education every two years as a condition of license renewal. CCR Section 1399.489 provides the authority to the Board to perform random audits of acupuncturists who have reported compliance with the continuing education requirement.

Prior to 2001 licensees provided self-certification of compliance with the continuing education requirements. In an attempt to verify self certification and strengthen compliance, commencing in 2001 the Board implemented a new system for recording and retaining CE provider attendance records within a monthly filing system that would be used to cross-check and verify licensees attendance to continuing education courses. Providers submit attendance records showing the name, signature and license number of the acupuncturist who attended the approved course within ten days of completion. Monthly 10-20 licensees reporting compliance with the continuing education requirement are randomly selected and sent an audit letter. The audit letter also contains language that would allow the Board to issue a citation and levy a fine should the licensee fail to comply with the continuing education requirements of Section

1399.489. Compliance levels have ranged between 93% to 97% annually. CCR Section 1399.463 authorizes the Board to issue a citation and fine for noncompliance. B&P Code Section 4945(e) allows the Board to renew a license if the licensee's continuing education is deficient and the licensee must make up the deficient continuing education hours by the next renewal cycle.

Steps Board has taken to improve CE program/courses: 2003-2004 the Board conducted an extensive review of CE requirements and quality/relevancy of approved CE courses. The results of this review is reflective in the proposed continuing education regulations, hearing scheduled for the Board's August 22, 2005 meeting. Copies of the Publication Notice, Initial Statement of Reasons and Proposed Language can be found in the members meeting packets for the August 22-23, 2005 meeting and on the Board's website At: www.acupuncture.ca.gov, under 'Laws and Regulations.'

6. *In response, the board recently took certain remedial actions, including adoption of a requirement that directs acupuncturists to use only sterile, single-use disposable needles. How does the board ensure that practitioners are complying with public health safety requirements?*

Answer:

The Board shall ensure practitioners are complying with public health safety by establishing quality educational standards that include a focus on public health and safety issues throughout a licensee's formal and continuing training. In addition, it is also prudent to keep licensees informed of public health and safety requirements and changes in the laws and regulations via distribution of yearly Laws and Regulations, annual Points of Interest licensee newsletter, and keeping the Board's website updated with current public health and safety requirements and issues. Furthermore, Board staff and members must also keep current on new findings and decisions relating to public health and safety issues at both the state and federal level and they must also utilize an enforcement program where action is taken against licensees in noncompliance to required public health and safety requirements.

Sincerely,


Kenny G. Cherng, L.Ac.

The first of these is the fact that the system is not a simple one. It is a complex system, and the behavior of the system is not linear. The second is that the system is not a simple one. It is a complex system, and the behavior of the system is not linear.

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SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

July 27, 2005

Steven Tan, M.D.
1655 Greenfield Avenue
Los Angeles, CA 90025

Dear Dr. Tan:

As you know, your appointment to the California Acupuncture Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by August 19, 2005. Thank you for taking the time to respond to this request.

1. *What are your goals and objectives as a member of the California Acupuncture Board? What do you hope to accomplish during your tenure?*
2. *What do you believe is the highest priority of the California Acupuncture Board? How should this be accomplished?*

Educational Requirements

As in scope of practice issues, educational requirements for obtaining a license have been contentious, especially whether additional course hours of study would create unnecessary barriers to the entry of prospective acupuncturists and whether this might, in turn, result in a limitation of patient services. The board is on record in favor of eventually increasing training hours from 3,000 to 4,000.

3. *The Little Hoover Commission recently stated that the current level of 3,000 hours of training is adequate to prepare incoming acupuncturists and protect public safety. Do you agree? Please explain. Or, do you believe that additional education requirements are necessary? Could they create a barrier to entry into the profession and potentially result in higher charges and fewer choices to consumers? If so, what do you think the board could do to ensure access to the profession and patient access to the providers?*

Continuing Education

In 1976, when California began licensing acupuncturists, licensees were required to have at least 1,350 hours of training, a requirement that was increased to 2,348 hours in 1985 and to 3,000 hours this year. Consequently, some of the estimated 6,428 practicing acupuncturists have far more education than others who were licensed earlier, some of whom were "grandfathered" with no education or examination requirements.

4. *Do you believe that the uneven levels of required training is cause for consumer concern? How can a consumer obtain knowledge of the acupuncturist's training, skills, ability and experience? Is continuing education sufficient to bridge the gap between licensees with fewer hours of training than those with more hours?*
5. *In its 2004 Sunset Review Report filed with the Legislature's Joint Committee on Board, Commissions and Consumer Protection, the board outlined actions taken to improve the auditing and accountability of its continuing education program. What is the status of those changes? Are they fully implemented? Are there other steps that should be taken in continuing education courses to further enhance a licensee's knowledge, skills and abilities to protect consumers?*

Oversight Issues

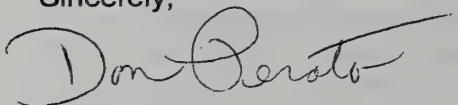
In its September 2004 analysis of the board's performance, the Little Hoover Commission said, "Many of the specific issues that the Governor and the Legislature asked the commission to review have festered because the Acupuncture Board has often acted as a venue for promoting the profession rather than regulating the profession." It further asserted that the "board has not forcefully responded to emerging information about basic public safety concerns."

6. *In response, the board recently took certain remedial actions, including adoption of a requirement that directs acupuncturists to use only sterile, single-use disposable needles. How does the board ensure that practitioners are complying with public health safety requirements?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:SK:dc

cc: Acupuncture Board

August 5, 2005

Senate Rules Committee
 Nettie Sabelhaus, Rules Committee Appointments Director
 Room 420, State Capitol
 Sacramento, Ca 95814

Dear Ms. Sabelhaus,

Please find below my answers in response to the questions posed by the Senate Rules Committee for the confirmation process regarding my appointment to the California Acupuncture Board. The numbers preceding each answer refer to the question numbers presented in the letter from the Senate Rules Committee dated July 27, 2005.

- 1,2. My primary goal as a member of the California Acupuncture Board, and the highest priority of the California Acupuncture Board, is to ensure the protection of the public through judicious and sensible regulation of the Oriental medical profession in California.
3. I agree with the Little Hoover Commission's conclusion that the current level of 3,000 hours of training is adequate to prepare incoming acupuncturists and to protect public safety. I do not believe that additional education requirements are necessary. I believe additional education requirements may potentially create a barrier to entry in the profession and result in higher charges and fewer choices to consumers. As required by current statute, any increases in training or licensure requirements should follow proper protocol via appropriate channels such as the Office of Examination Resources. Any proposed increases must be studied and evaluated based on the safety needs of the public.
4. I do not believe that the uneven levels of required training is cause for consumer concern. Differential gains in patient care expertise acquired through clinical practice and practical experience are likely to counterbalance differential gains acquired through regulated training. Consumers can either check on the California Acupuncture Board's website or contact the Board directly to confirm that a licensee has met all qualifications set forward in statute, gain information on the status of an acupuncturist's licensure, and learn if any enforcement actions have been taken. I believe that continuing education is sufficient to bridge the gap between licensees with different hours of training. Continuing education should address issues pertinent to public safety in the practice of Oriental medicine and equalize the knowledge base of different licensees in the safe practice of Oriental medicine.

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5. The actions outlined by the Board in its 2004 Sunset Review Report filed with the Legislature's Joint Committee on Board, Commissions and Consumer Protection to improve the auditing and accountability of its continuing education program include the following [as quoted from the Acupuncture Board's January 3, 2005 Letter to the Joint Committee's Background Paper (Issue 8, Page 12)]:

"B&P Code Section 4945 requires an acupuncturist complete 30 hours of continuing education every two years as a condition of license renewal. CCR Section 1399.489 provides the authority to the Board to perform random audits of acupuncturists who have reported compliance with the continuing education requirement.

Prior to 2001 licensees provided self-certification of compliance with the continuing education requirements. In an attempt to verify self certification and strengthen compliance, commencing in 2001 the Board implemented a new system for recording and retaining CE provider attendance records within a monthly filing system that would be used to cross-check and verify licensees attendance to continuing education courses. Providers submit attendance records showing the name, signature and license number of the acupuncturist who attended the approved course within ten days of completion. Monthly 10-20 licensees reporting compliance with the continuing education requirement are randomly selected and sent an audit letter. The audit letter also contains language that would allow the Board to issue a citation and levy a fine should the licensee fail to comply with the continuing education requirements of Section 1399.489. Compliance levels have ranged between 93% to 97% annually. CCR Section 1399.463 authorizes the Board to issue a citation and fine for noncompliance. B&P Code Section 4945(e) allows the Board to renew a license if the licensee's continuing education is deficient and the licensee must make up the deficient continuing education hours by the next renewal cycle."

The above quoted changes have been fully implemented.

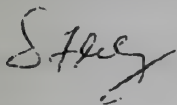
Other steps that will soon be taken in continuing education courses to further enhance a licensee's knowledge, skills and abilities to protect consumers follow from the Board's extensive review of continuing education requirements and quality/relevancy of approved continuing education courses conducted in 2003-2004. Some of these steps include limiting the amount of continuing education hours granted in one day to 8 hours; limiting the number of hours approved for courses taught simultaneously in two languages; prohibiting practical or hands on techniques for independent or home study courses; requiring passage of an examination for courses approved for independent or home study; prohibiting providers from selling or discussing name brand products during a course; specifying instructor's minimum experience in subject matter taught; imposing

stricter guidelines in advertising by requiring that course titles reflect course content without market language, state the level of difficulty of a course and state a full disclosure of all products that will be for sale after completion of a course; requiring as a condition of first renewal a minimum of four hours of continuing education in ethics and practice management; requiring a minimum of four hours of continuing education in drug/herb interaction as a condition of renewal every two years; requiring passage of an exit exam for independent or home study continuing education course as a condition to receive credit; limiting the number of credit hours for category 2 courses; deleting the provision allowing instructors to receive credit for courses they teach; requiring licensees as a condition to restore their license from an inactive status to complete four hours in the interaction of drugs and herbs as part of the required 30 hours of continuing education.

6. The Board ensures that practitioners are complying with public health safety requirements through several methods. The Board strives to establish quality educational standards that focus on public health and safety issues at every level of an acupuncturist's training. Board staff and members keep current on new findings and decisions relating to public health and safety issues at the state and federal level. All licensees are informed of public health and safety requirements and changes in the laws and regulations through multiple means including the distribution of yearly Laws and Regulations, the distribution of an annual Points of Interest licensee newsletter, and timely updates of the Board's website with current public health and safety requirements and issues. Finally, the Board's enforcement program will continue to action against licensees who fail to comply with required public health and safety requirements.

Please do not hesitate to contact me if you need further clarification on any of the issues discussed above.

Sincerely,



Steven Tan, MD, LAc

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NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

July 25, 2005

Richard B. Rogers
4257 Avenue Del Mar
Carpenteria, CA 93012

Dear Mr. Rogers:

The Senate Rules Committee will schedule a hearing on August 31st on your confirmation as a member of the Fish and Game Commission. It is not necessary for you to appear in person at the hearing if, instead, you respond in writing to the following questions.

We would also like to receive an updated Form 700, Statement of Economic Interest. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

Please respond by August 17th so committee members will have sufficient time to review the material before your confirmation hearing.

Statement of Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure on the Fish and Game Commission?*

Decline in Ocean Resources

The U.S. Commission on Ocean Policy recognized that there has been a serious decline in ocean resources, a fact that has also been reported in numerous scientific journals.

California already has several innovative and comprehensive statutes governing marine resource management, including the Marine Life Management Act and the Marine Life Protection Act. Both of these statutes delegate significant responsibility to the Fish & Game Commission to manage ocean resources wisely for long-term sustainability

2. *What specific policies, programs or actions do you believe should be taken to address the decline of our ocean resources? What do you believe are the most critical threats to ocean resources at this time?*
3. *How is the commission working with the department in addressing this decline?*

Strategic Plan

In 1998 the commission adopted a strategic plan to guide the commission and the Department of Fish and Game in ensuring the long-term sustainability of fish and wildlife resources. A number of goals were established to help the commission achieve its strategic plan, including determining the status of wildlife resources, development of management policies, and the development of administrative and fiscal resources for the commission.

4. *The commission has yet to conduct annual resource assessments as outlined in the 1998 strategic plan. How is the commission addressing the goals and priorities of its strategic plan?*
5. *What staffing levels has the commission determined are needed to carry out its responsibilities and mandates?*

Endangered Species

The commission determines which animal and plant species will be listed as threatened or endangered under the California Endangered Species Act. In the past the commission has been criticized for failing to ensure that the department prepares effective recovery plans for listed species. The commission's 1998 strategic plan established a goal of being more "proactive in the protection of the state's fish and wildlife."

6. *How is the commission implementing its goal of being proactive in how it is carrying out the provisions of the Endangered Species Act?*

Prior to the commissioners debating an endangered species issue, the executive director of the commission typically reads the following statement:

The commission, under legal criteria for listing set forth in the California Endangered Species Act, is not authorized to give consideration to potential economic losses, present or future, in making the factual determination as to whether listing may be warranted. Both the determination of said economic impacts and the resolution of such conflicts are left to other agencies under

California law on a case-by-case basis. The commission's position is that in implementing the California Endangered Species Act, it is not legally permitted to consider economic impacts, and no implication should be drawn from this action that it has such authority or that it has exercised it.

The courts have found that the evidentiary standard for moving a species to a candidate status for endangered or threatened is "sufficient information to indicate that the petition action may be warranted."

7. *Do you believe that commissioners may consider economic effects when considering Endangered Species Act petitions?*

Commission Legal Findings

At a meeting in February of this year the commission considered listing Tricolored Blackbird as a candidate species for either an endangered or threatened species status.

After the commission had voted 3 to 1 to deny the petition, legal counsel informed the commission that it would have to develop written reasons why they had denied the petition and that he would work with staff to develop the appropriate legal language. Counsel went on to say he had heard the reasons for denial to be lack of scientific information and conflicting population totals from the biologist that had been retained by the landowners' organization. Observers argued that the commission's legal counsel was "cleaning up" the commission's findings to more closely align them with the requirements of current law. This situation has reportedly occurred on other occasions.

8. *Has legal counsel for the commission or the executive director discussed with you, as a new commissioner, the legal and evidentiary requirements necessary for the commission to make certain findings?*

Minutes of Fish and Game Commission Meetings

The commission does not record minutes of its hearings. However, an outside company does record the proceedings using video and audio tape. The audio tape is available on the commission's Web site several weeks after a meeting. There is no index to the audio tape so the public must usually listen to up to two days of commission proceedings to try and find the issue they are interested in.

9. *Do you believe the public has adequate access to your meetings? Specifically, should the commission provide minutes of its meetings, provide indexed audio tapes or any other methods to allow the public easier access?*
10. *What are the constraints on providing easier access for those members of the public that can not attend commission meetings?*

Enforcement of Fish and Game Laws

In 2001 there were 402 wardens. This year the number has fallen to about 250 – roughly the same number of wardens on the job in 1971.

As the number of wardens in the state continues to fall, recruitment and retention of wardens is proving difficult. Enforcement of fish and game laws and protecting public trust responsibilities is becoming more harder.

11. *What has been the consequences of having fewer wardens?*
12. *What recommendations would you make to the Department of Fish and Game to increase the enforcement of fish and game laws and to meet the state's public trust responsibilities?*

Policy Direction to the Department of Fish and Game

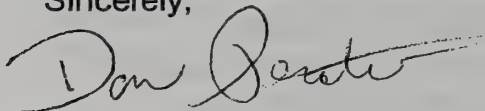
The Fish and Game Code states that the general policies for the conduct of the department shall be formulated by the commission. The director shall be guided by those policies and shall be responsible to the commission for the administration of the department in accordance with those policies.

13. *How does the commission provide policy direction to the Department of Fish and Game?*
14. *What specific administrative changes would you recommend to provide for more robust public involvement in the activities of the commission?*

Please direct your response to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:KW:dc

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure on the Fish and Game Commission?*

I have spent the last 20 years or so dedicated to the process of conservation and biodiversity. The State of California faces considerable challenges in protecting the public trust resources while faced with an ever increasing impact from our growing population and its attendant impacts on the natural world.

The Fish and Game Commission and the Department of Fish and Game have a leading role in the protection of our public trust resources. It will be my charge to see to it that the Mission and Vision of both the Commission and the Department are fulfilled. This must be accomplished while all constituents and stakeholders are informed and fully represented and the ever changing diversity of uses is carefully considered.

2. *What specific policies, programs or actions do you believe should be taken to address the decline of our ocean resources? What do you believe are the most critical threats to ocean resources at this time?*

The Department and the Commission have numerous tools at their disposal to correct the decline in ocean resources that is so very evident. The MLMA and the MLPA are State policy. We need to fully implement these tools, and others, into a set of marine reserves and regulations so that our ocean resources are conserved and protected. Rules such as last year's trawling statute go a long way toward accomplishing our goals.

However, a mono-focus on ocean fishing methods, bag limits, and timing will not get us all of the way to our goal of a sustainable ocean. Terrestrial runoff and sewage treatment plants are, if not the most, important and profound impacts on our ocean resources within control of the State of California.

3. *How is the commission working with the department in addressing this decline?*

The Department and the Commission are doing all that they can in light of the restrictive budget constraints placed upon them. Enforcement and monitoring, as well as doing the research required for biomass assessment and regulation creation, all require funds. The Department has already done a significant streamlining with the reorganization of its Enforcement Branch. The current focus is on holding the line where possible. This strategy is under increasing pressure.

4. *The Commission has yet to conduct annual resource assessments as outlined in the 1998 strategic plan. How is the Commission addressing the goals and priorities of its strategic plan?*

As part of the Commission's major regulatory actions, i.e., sport fishing and hunting, the Department does provide a resource assessment as part of its environmental document. Also, up until last year, there was a standard agenda item on the Commission's agenda each meeting. That item was to get public commentary on the strategic plan as an ongoing and living document. The strategic plan should have been revised in 2003. This has not been done. It is my intention that this effort will be restarted in 2006.

AUG 10 2005

5. *What staffing levels has the commission determined are necessary to carry out its responsibilities and mandates?*

The MLMA and MLPA came into being with no commensurate additional budget allocated to the Commission or the Department. The Commission now has a proposal for a regulatory unit within the Commission with 6 new staff positions. There would be an attorney, an economist, a senior biologist, and clerical staff. This proposal would free the Department's biologists to collect data and do biomass analysis and release them from the current burden of writing regulatory documents. The Commission regulatory staff would work closely with the Department's biologists. The Department would come to the Commission with an issue and Commission staff would write the necessary documents and regulatory language. This would release the Department's biologists so that they could be back out in the field where they are most effective and leave the regulation creation to a special unit created to fulfill that requirement.

6. *How is the Commission implementing its goal of being proactive in how it is carrying out the provisions of the Endangered Species Act?*

The ESA is the law. It is not up to the Commission to introduce economics at a time where the law specifically states that such consideration is not to be given. The listing of species is purely an event of biological evaluation and analysis. Economics plays an important part in the determination of the most effective strategies and techniques for species protection and recovery.

7. *Do you believe that commissioners may consider economic effects when considering Endangered Species Act petitions?*

No, I do not. It would be against the law.

8. *Has legal counsel for the commission or the executive director discussed with you, as a new commissioner, the legal and evidentiary requirements necessary for the Commission to make certain findings?*

Yes, I have been fully briefed.

9. *Do you believe the public has adequate access to your meetings? Specifically, should the Commission provide minutes of its meetings, provide indexed audio tapes or any other methods to allow the public easier access?*

Timely and easy public access to the Commission's proceedings is an essential and necessary part of the process. The Commission had not allocated staff to the time consuming issue of indexing the audio tapes of the proceedings. While the tapes are available in a timely fashion, the Commission staff is currently working on a procedure to address this concern.

10. *What are the constraints on providing easier access for those members of the public that can not attend commission meetings?*

The Commission's meetings are broadcast live on the web in real time for about 90% of all full Commission meetings and sub-committee meetings. We are working to get full coverage.

11. *What has been the consequences of having fewer wardens?*

There have been profound consequences. You can have the very best regulations and protected areas and, without adequate enforcement and monitoring, you will have resource degradation. All of California government departments are crying for more budget allocation. If you under fund the Department of Fish and Game, and this results in resource damage, the results could be permanent and irreversible.

12. *What recommendations would you make to the Department of Fish and Game to increase the enforcement of Fish and Game laws and to meet the state's public trust responsibilities?*

The Department is doing a very good job of attempting to balance their budget restrictions with the realities of their responsibilities. Fish and Game has gone to "straight line enforcement." Field officers report directly to the Chief of Enforcement and this organization is as streamlined as possible. This reorganization created 12 new field warden positions by the elimination of supervisory positions. They desperately need more budget allocation if they are to adequately protect California's resources.

13. *How does the Commission provide policy direction to the Department of Fish and Game?*

The Commission goes over several of its policies at each and every meeting. There is 100% review each year. The Director of Fish and Game reports annually on our policies and the Department's compliance efforts. The MLPA implementation is a good example of this process, particularly in the area of restricted access of commercial fisheries. The Commission developed policies through Department and public input.

14. *What specific administrative changes would you recommend to provide more robust public involvement in the activities of the Commission?*

I will attempt to get the indexing of our minutes a reality as soon as possible. We have a good format with the live web broadcast and need to keep that going.

We should continue to focus on moving the Commission meetings around the state. This provides access for individuals who are restricted in their ability to get to Sacramento. I would recommend the funding of an additional position at the Commission. That position would be a public information officer whose task would be to place advertisements in local media so as to keep the public informed of the Commissions

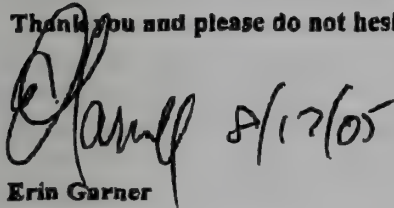
meetings, their location, agendas, and the availability for the public to be heard on issues of their choice. We frequently find that our meetings are populated by "the usual suspects" and that the precious few of the general public who do show up, specific issue stakeholder or not, are underrepresented. Just as frequently, however, we get wonderfully creative ideas from these people. We need more of that.

Goals for the California State Mining and Geology Board Erin Garner

My goals for my term as a Board Member on the State Mining and Geology Board (SMGB) include the following:

1. Assist our new SMGB Executive Officer with understanding and implementing the policies and practices of the SMGB in a strictly protective, safe, fair, and consistent manner.
2. Work with the other SMGB Board Members, both old and new, to determine and agree on an updated strategic plan and vision for policy, legislation, rule making, and enforcement within our jurisdiction.
3. Devise a formal, consistent, and fair enforcement policy. The State Water Resources Control Board has drafted a policy in recent years to ensure consistent and appropriate enforcement, and I would like to see a similar approach at the SMGB.
4. Encourage and promote safe work practices for any agencies implementing SMGB regulations.
5. Enhance the SMGB web site to become more informational and educational.
6. Act as a liaison with other environmental and resource agencies, including the State Water Resources Control Board, the Regional Water Boards, the Air Resources Board, the Department of Ecology, and others to ensure strong, consistent policy development.
7. Closely monitor and follow the direction of the legislature as new legislation is developed and passed.

Thank you and please do not hesitate to call me at (408) 569 7647 with any questions or concerns.

 8/17/05
Erin Garner

Date: August 17, 2005

From: Seena N. Hoose, P.G. No. 4355

To: Senator Don Perata, Chairman Senate Rules Committee

Subject: Statement of goals for the State Mining and Geology Board

My personal objective in serving on the State Mining and Geology Board is to use my knowledge and skills for the good of the people of the state of California. The SMGB has three primary responsibilities, 1) to enforce the Surface Mine Reclamation Act, 2) to assist state and local agencies in appropriately applying the seismic and fault hazards mapping acts, and 3) to provide direct access to the regulatory and policy making process for the public.

My goal for the Surface Mine Reclamation activities is to strike a balance between the protection of the public health and safety and the needs of the surface mining industry which is important to the economic engine of California. My objective is to achieve compliance with the law in a manner that is based on sound scientific facts, and that protects the public from potentially contaminated water, airborne materials, steep slopes liable to failure, and from other hazards associated with mine waste and open pits. Also, the Act's purpose is to return the mined land to a condition where other use of the land is practical. Since my recent appointment I was able to bring the board members to a middle ground on a recalcitrant case where the board agreed to charge a partial fine for non-compliance and to defer the remainder of the fine, giving the mine owner a short schedule to come into compliance. If the owner did not meet the dates the remainder of the fine would become due on a progressive scale. So far this has resulted in compliance. This is an example of my goal at work.

I also share the goal of the State Geologist, Dr. John Parrish, to bring the Office of Mine Reclamation back into the California Geological Survey. This can result in several improvements in efficiency, including the effectiveness of the SMGB.

The first 15 years of my career was in seismic hazard research at the U.S. Geological Survey. On this board my goal is to develop additional outreach and training programs for local agency staff charged with implementing seismic safety and appropriate development constraints. The board has already developed excellent tools and information to assist these agencies. Now and for the long term, the board needs to develop programs that assure the appropriate application of state law and the development of consistent local requirements.

The open meeting aspect of board governance in specified areas of consideration is of paramount importance to developing policies, regulations, and enforcement that meet the needs of the public. I have seen many instances where policies, regulations, and perspectives have been changed by information provided from the public during various board meetings. This is the very best way for the people to be heard on subjects that affect them.

I am personally committed to unbiased, balanced, scientific application of the law in a manner which results in effective and practical results to benefit all Californians.

AUG 18 2005

THE HISTORY OF THE

CITY OF NEW-YORK

FROM 1624 TO 1824

BY JOHN B. HENRY

IN TWO VOLUMES

VOL. I.

FROM 1624 TO 1789

NEW-YORK: PUBLISHED BY

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J. B. HENRY, 1824



STATE MINING & GEOLOGY BOARD
DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA



Arnold
 Schwarzenegger
 GOVERNOR

August 8, 2005

ALLEN M. JONES,
 CHAIRMAN

ROBERT HABLITZEL,
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SEENA HOOSE

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RICHARD RAMIREZ

ROBERT TEPEL

Nettie Sabelhaus
 Senate Rules Committee
 State Capitol Building Room 500
 Sacramento, CA 95814

Re: Confirmation of Appointment to the State Mining and Geology Board

Dear Nettie:

In accordance with Senator Perata's July 27, 2005 letter, this response outlines my short and long term goals for the State Mining and Geology Board.

The Board represents the State's interest in the development, utilization, and conservation of mineral resources; reclamation of mined lands; development of geologic and seismic hazard information; and to provide a forum for public redress. To that end my goals as a Board member are as follows:

MINERAL RESOURCES – One of the primary responsibilities that I will pursue is the prudent and sensible development of the State's mineral resources. As a Board member, one of my long-term goals will be to safeguard the valuable mineral resources that reside within the State, such that they are available to future generations. One of my short-term goals will be expedite the identification of mineral resources, to establish mineral resources as an important issue in land use planning, and to encourage the wise utilization of mineral resources in anticipation of the future needs of the State.

RECLAMATION OF MINED LANDS - I have identified as a short-term goal the reclamation of mined lands such that they are readily adaptable for alternative land uses. Since my appointment to the Board, I have voted on several reclamation plans for existing and future mines. My voting record has shown that I am strongly behind the issue that adequate financial assurance funding be set aside in advance of the commencement of mining operations. I have also voted to levy fines on mining operators who have violated the State's reclamation regulations.

GEOLOGIC AND SEISMIC HAZARDS – As a registered geologist I am well aware that California is the most geologically diverse and seismically active state in the Country. One of my long-term goals as a Board member will be to seek to reduce the impacts of geologic and seismic hazards, and thus safeguard the citizens of the State by promoting the implementation of the Alquist-Priolo Earthquake Fault

*Mission of the State Mining and Geology Board is to Represent the State's Interest in the
 Development, Utilization and Conservation of Mineral Resources; Reclamation of Mined Lands;
 Development of Geologic and Seismic Hazard Information; and to Provide a Forum
 For Public Redress*

AUG 10 2005

801 K STREET
 MS 24-05
 SACRAMENTO
 CALIFORNIA
 95814

PHONE
 916/322-1082

FAX
 916/445-0738

INTERNET
 consrv.ca.gov

Zoning Act and the Seismic Hazards Mapping Act. I will promote both of these Acts through the regulatory process and by encouraging public awareness of these hazards.

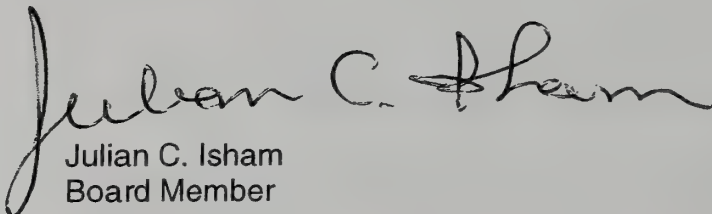
FORUM FOR PUBLIC REDRESS – I believe that an important legislative mandate of the Board is to represent the general interests of the public. One of my goals will be to work cooperatively with local agencies, businesses, and the public, and to provide an impartial appeals process for those seeking redress of grievances.

EDUCATION & PUBLIC OUTREACH - The Board is authorized by statute to develop public information on the State's geology, mineralogy, and seismology. Since I represent the interests of the public as a Board member, one of my goals is to make the public aware of the services offered by the Department of Conservation (DOC) and the California Geologic Survey (CGS). An important aspect of this goal will be to encourage the staff of the DOC and the CGS to develop educational materials regarding the State's geological diversity, seismic hazards, and mineral resources. I will continue to personally develop two-way communication links with public agencies, businesses, educational institutions, and public stakeholders by making myself available to attend meetings and forums through the State.

INTER-GOVERNMENTAL COOPERATION - I believe that for the Board's programs to operate efficiently and effectively with other agencies, the Board must work cooperatively with them. An important aspect of the role that the Board plays in the administration of the Surface Mining and Reclamation Act (SMARA) is its role as lead agency, and its communications with County and City agencies who administrate SMARA at the local level. One of my short-term goals is to promote all forms of information access to these local public agencies, and to ensure that these local agencies are updated regarding their roles in implementing State policies regarding conservation, reclamation, and geologic hazards.

If you have any questions concerning my short and long-term goals, please call me at 925/288-2381.

Sincerely,

A handwritten signature in cursive script that reads "Julian C. Isham". The signature is written in dark ink and is positioned above the printed name and title.

Julian C. Isham
Board Member

STATEMENT OF MY GOALS FOR THE STATE MINING AND GEOLOGY BOARD

Prepared for: California State Senate Rules Committee
By: Robert E. Tepel, August 11, 2005
Hearing Date: August 31, 2005

The mission of the State Mining and Geology Board is to represent the State's interest in the development, utilization, and conservation of mineral resources and in the reclamation of mined lands; to set policy and criteria for the development of geologic and seismic hazard information by the State Geologist; and to provide a forum for public redress. In pursuit of this mission, I believe that the following goals are important.

Short term (One to two years)

Enhance, update, and make more specific reclamation plan standards to be followed by surface mine operators in developing reclamation plans, and in reclaiming exhausted mine sites for useful purposes.

Support the state Office of Mine Reclamation as it re-institutes its workshop program to train local lead agency staff in mine reclamation plan review. Better technical reviews of mine reclamation plans will reduce the workload of state staff, and will protect the state's interest in responsible surface mine reclamation through local lead agencies as intended by the Surface Mining and Reclamation Act of 1975.

FEMA (Federal Emergency Management Agency) funding for California's Seismic Hazards Mapping Program has expired. The State Mining and Geology Board should support the California Geological Survey in its efforts to develop additional FEMA funding to continue this vital program to better protect citizens and the complex and costly infrastructure on which they rely from the damaging effects of earthquakes.

Long term (two to four years)

Evaluate the efficacy of a minimum Financial Assurance amount for surface mining operations to guarantee that adequate funding is available for the reclamation of exhausted surface mine sites.

Clarify and make specific SMARA's legislative mandates on surface mining requirements through proposed legislative and regulatory changes to remove ambiguities from the statutes and reduce the causes of legal actions.

AUG 19 2005

Continuous goals:

Support full implementation of the Abandoned Mines Program within the Department of Conservation. The Department of Conservation's Office of Mine Reclamation has determined that there are approximately 39,000 historic abandoned mines in California, and over 130,000 dangerous mine features (shaft openings, tailings heaps, smelter sites, etc.) that remain unreclaimed.

Build and maintain a professionally qualified, fair, and expertise-balanced State Mining and Geology Board membership that affords equal access and treatment for all of the state's citizens and businesses.

Conduct public hearings and act on the public's business expeditiously.

AUG 3 2005

Nettie Sabelhaus,
Rules Committee
Appointments Director

STATEMENT OF GOALS
CALIFORNIA STATE PARK AND RECREATION COMMISSION

Dear Ms. Sabelhaus,

I am sincerely honored to have been appointed by Governor Schwarzenegger to serve on the California State Park and Recreation Commission.

As a member of the Commission, my goal is to enhance and protect the natural resources of this state. To quote "That beauty is in the eyes of the beholder" is not necessarily everyone's opinion. But by going forward in educating the citizens of this great state, we will succeed in adding that 'polished beauty' to our state parks.

In addition, I hope to have all of our state parks accessible to everyone. Citizens with disabilities do not always have the ability to enjoy what some people take for granted. For this reason and with my past experience working with persons with disabilities, I know that I can and will make a difference as a member of the State Park and Recreation Commission.

I am also the creator of the Clarence Frank Baker Park in Elk Grove. As a park for citizens with special needs, it is located adjacent to three facilities for persons with disabilities, ranging from five years old to adult, where it serves as a valuable component of their daily routine.

I am honored to have this opportunity to assist the Governor in making sure that we do not lose any of our natural treasures.

I cannot imagine being without parks and recreational facilities. They are what I have come to advocate for. A gathering place for everyone of all walks of life to come together to enjoy. We are the caretakers for our future generations. Let's do it right and not falter in our goals.

Respectfully,

Sophia Scherman

AUG 8 2005

To: Senate Rules Committee
Re: Goals for the State Park and Recreation Commission
Submitted By: Acquanetta Warren, Member of State Park and Recreation Commission

The purpose of this statement is to outline my goals for State Park and Recreation Commission:

Support and Finalize the General Plans for the various State Parks.

These plans provide a vision of how the parks are developed, utilized by the public and a protection for the resources housed in the various state park facilities. Also, they provide an opportunity for public input by interested public members, which in most cases are impacted by developed plans for state parks.

Increase Resource Protection and Recreational opportunities.

Protect valuable resources at State Parks but review and recommend more recreational opportunities where feasible. Our resources are valuable and they should be protected but careful evaluation should be given to the population growth in this state to increase areas for the public to participate in recreational activities.

Develop outreach programs to the public highlighting the Availability of recreational opportunities existing in the State of California.

Assist with achieving the mission of the California Department of Parks and Recreation by providing for the health, inspiration, and education the people of California by preserving the most natural and cultural resources and creating outdoor recreational opportunities. It is imperative that we are able to increase citizen's awareness of how they can utilize these opportunities to enhance their health.

AUG 22 2005

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Captain Nancy L. Wagner

17 August 2005

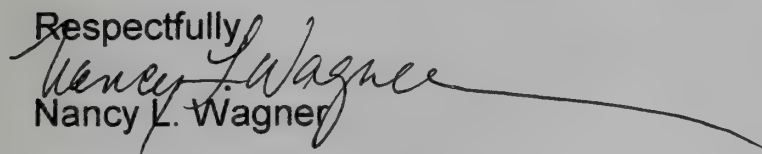
Senator Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, Ca. 95814-4900

Dear Senator Perata:

As a member of the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, Suisun and Monterey, my priorities are to safeguard the environment and commercial activity of the Bay. As Commissioner, my efforts remain to promote the safe navigation of large vessels throughout the 200 miles of pilotage grounds. I look forward to working with government, industry and environmental organizations to ensure the safety of our waters while supporting a strong maritime industry.

Thank you for your consideration on my confirmation as a member of the State Board of Pilot Commissioners.

Respectfully,


Nancy L. Wagner

AUG 22 2005

CAPTAIN DAVID I. WAINWRIGHT
3246 Fairview Avenue
Alameda, California 94501

August 17, 2005

Senator Don Perata, Chairman
Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento, California 95814-4900

Dear Senator:

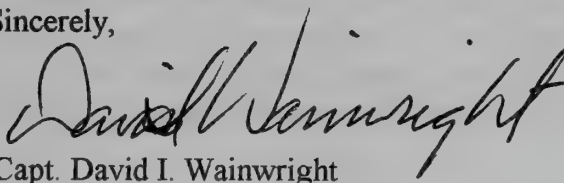
With reference to your request, dated July 27, for an overview of my goals for the Board over the coming years, I am honored to have the opportunity to outline my thoughts.

My first goal would be to ensure that through training and education, the San Francisco Bay Pilots continue to field the finest pilots in the world.

Additionally, through the Commission I would work to maintain and foster business relationships within our regional maritime community, being ever respectful of our awesome responsibility to the People of California to nurture one of the great engines of California prosperity – the Pacific Rim Trade.

Finally, to never forget the glorious natural beauty of our State and that healthy business and a healthy environment are not mutually exclusive.

Sincerely,



Capt. David I. Wainwright

AUG 23 2005

AUG 23 2005



The first part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, followed by a description of the methodology used in the study. The results of the study are then presented, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The second part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, followed by a description of the methodology used in the study. The results of the study are then presented, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The third part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, followed by a description of the methodology used in the study. The results of the study are then presented, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The fourth part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, followed by a description of the methodology used in the study. The results of the study are then presented, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The fifth part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, followed by a description of the methodology used in the study. The results of the study are then presented, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

CALIFORNIA LEGISLATURE

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NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 23, 2005

Catherine Mary Banker
5180 Sapphire Street
Alta Loma, CA 91701

Dear Ms. Banker:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment to the California Commission on Teacher Credentialing.

Following are questions we would like you to address in writing prior to the Committee hearing. Please have this information returned to our office by June 13, 2005 so that committee members will have sufficient time to review the material before your confirmation hearing.

Questions:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?
2. The Bureau of State Audits published an audit report of the CTC in October 2004 identifying several issues in need of improvement. One of the issues was that CTC should provide stronger evaluation of its programs, including better performance review of the teacher credentialing process and its customer service activities. How has the CTC responded to this issue and what changes does it propose?
3. A major source of CTC's funding for state operations is generated from two special fund sources that derive fees from the processing of teacher credentials and the administration of various required educator exams. This past year, there has been a significant drop in credential and testing volume due to changes in

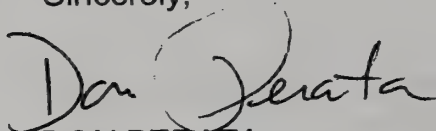
the teacher workforce. This change has caused a projected CTC shortfall of \$3.6 million for the 2005-06 budget year. What steps can the Commission take to better anticipate future reductions and take appropriate action to maintain a balanced budget?

4. Current statute authorizes credential fees of \$70; however, due to earlier growing reserves, the fees were reduced to \$55. This has substantially reduced revenues for the CTC over the past five years. According to the LAO, a \$5 increase in the application fee would raise revenues by \$1.1 million that could be used to offset the CTC's funding shortfall. Do you believe increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit? Please explain.

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,



DON PERATA

DP:MG:gd

Catherine Banker
5180 Sapphire St.
Alta Loma, CA 91701
909-224-3110 cell

Senator Don Perata, Chairman
Senate Rules Committee
C/O Nettie Sabelhaus, Director
Rules Committee Appointments
State Capitol, Room 420
Sacramento, CA 95814

June 13, 2005

Honorable Don Perata:

Thank you for the opportunity to clarify my goals as a newly appointed Commissioner to the California Commission on Teacher Credentialing. The Commission faces many challenges as detailed in the Joint Legislative Audit Findings Report of October 2004. My personal goals are to openly review, discuss and implement the recommendations suggested by the Bureau of State Audits. The include but are not limited to:

- Ensuring that the CTC focuses on reviewing, improving and re-implementing the accreditation process to ensure alignment with K-12 core content standards and teacher training.
- Ensure that the online credentialing process is quickly expanded by requiring colleges and universities to utilize online credentialing and allowing county offices and districts access to it. Furthermore publicize the online renewal process to ensure greater online certification renewal thus reducing paper applications.
- Communicate effectively with the legislature, the needs and requirements to ensure implementation of the Teacher Performance Assessments.
- Ensure improved coordination with reports and surveys developed by other agencies including the colleges and universities.

In response to Question 2, it is vital to improve the information and reporting process by first identifying all the potential data that could be required for teacher credentialing and customer service activities and then secondly by ensuring that it is gathered and analyzed correctly. The Commission specifically identified the need for additional data and subsequent analysis to the staff and the Committee on Accreditation at the May/June meeting. The Commission also discussed the need to gather appropriate data in a standardized form from the public and private universities to begin the process of improving and aligning professional development.

Question 3 brings up the issue of budget deficits and balanced budgets, which the Commission discussed at its April 14, 2005 meeting. At that time the Commission voted to approve multiple cost cutting measures. Additionally the Commission discussed the

issue of expenditures exceeding revenues and avenues to ensure that the CTC would avoid future deficits. As discussed above the collection and analysis of data should assist the Commission in identifying potential future reductions in revenues due to reduced testing and credentialing needs.

To answer question 4, during the budget discussions of April 14, many "stakeholders" testified at the meeting urging the Commission to raise the credentialing fees. The Commission chose to take no action at that time, awaiting direction from the legislature, as any increase must be included in the budget. At this time (June 13, 2005) the Budget Conference Committee chose to approve the Assembly recommendations, which fail to raise the fees. Therefore the Commission will not raise the fees. I do not believe that increasing the fees is necessary given the one-time budget increase approved by the Budget Committee. Furthermore improved planning could avoid a deficit occurrence or a fee raise.

Thank you once again for the opportunity to assist the Rules Committee in understanding my goals and objectives as a newly appointed member of the CCTC. Please do not hesitate to contact me if additional information is needed.

Sincerely,



Catherine Banker

AUG 22 2005

Catherine Banker
5180 Sapphire St.
Alta Loma, CA 91701
310-916-1134

Senator Don Perata, Chairman
Senate Rules Committee
C/O Nettie Sabelhaus, Director
Rules Committee Appointments
State Capitol, Room 420
Sacramento, CA 95814

August 17, 2005

Honorable Don Perata,

Thank you for the opportunity to provide further clarification to the Honorable Members of the Senate Rules Committee in reference to the recent lawsuit filed against the CTC.

In regards to question one, while I certainly believe that the Senators should have the ability to ask any and all questions as it relates to such an important topic, I have been advised by Staff Counsel Mary Armstrong that this is considered current litigation and cannot be discussed outside of Closed Session. Due to the repercussions of the litigation, including potential legal costs to the state, I would urge the Members of the Senate Rules Committee to seek a confidential briefing from the Staff of the Commission on Teacher Credentialing. I certainly support such an important briefing.

Furthermore the first briefing that the Commissioners had concerning the lawsuit occurred on August 11, 2005 in Closed Session and the Commissioners have not been provided a copy of the lawsuit. Additionally, I as a new Commissioner, was not involved in the decisions relating to the lawsuit. I will attempt to answer the remainder of the questions to the best of my ability without violating any confidentiality as it relates to the lawsuit.

Question two asks what is the "purpose of establishing a new individualized" certificate internship program. The CCTC action was to make the Intern Certificate available to all candidates who met the specified requirements of federal law relative to alternative certification regardless of the type of preparation program in which they were enrolled. Federal law requires candidates participating in alternative certification to hold a bachelor's degree, have completed subject matter, be enrolled in a teacher preparation program and receive support, assistance and mentoring.

Question three asks "Will teachers with emergency permits who participate in the certificate internship program be fully credentialed by the end of the 2005-2006 school year as required by No Child Left Behind?" Emergency permits have been eliminated and the resulting Provisional Internship Permit is the replacement as clarified by Regulation 80021.

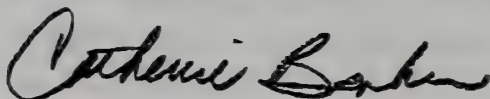
The second part of question three asks "How should the state respond to such instances where teachers continue to hold emergency permits beyond the federal guidelines?" My

understanding is that there will no longer be "emergency permits". Instead the state offers the "Provisional Internship Permit". The Provisional Internship Permit allows the applicant who successfully meets this requirement to satisfy this requirement through the existing school year, 2005/2006 but all permits expire 6/30/06. Therefore this Provisional Internship Permits will expire following that date. An additional "Short Term Staff Permit" will allow those LEA's who can substantiate that there are extenuating circumstances can allow a teacher an additional year through this permit process to complete the requirements of the Provisional Internship Permit.

Question four asks "What should the state be doing to help under prepared teachers who do not meet these minimum requirements and are not in compliance with the federal "highly qualified teacher" requirements?" Teachers that fail to attain a BS or BA and cannot pass the subject matter exam should not be allowed to continue until they do so. Similar to the state's requirement for passage of CBEST, passage of these fundamental steps should be considered a basic requirement for all teachers.

Thank you once again for the opportunity to assist the Rules Committee in clarifying some of the issues facing a newly appointed member of the CCTC. Please do not hesitate to contact me if additional information is needed.

Sincerely,



Catherine Banker

Maytte Bustillos

June 10, 2005

Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814-4900

JUN 20 2005

RE: Questions for the Confirmation Hearing

Dear Senate Rules Committee,

I am delighted and anxiously awaiting my confirmation. Below are my answers to the questions sent to me.

1. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?

As a member of the California Commission on Teacher Credentialing I hope to provide the knowledge, guidance and direction needed to fulfill the vision and mission statements of the Commission. I agree that it is the duty of the Commission to ensure that the educators are "fully prepared and effective" for the students of California. Furthermore, I believe it is essential to define our vision through the six goals set forth by the Commission.

1. How has the CTC responded to this issue and what changes does it propose?

The Commission responded to the suggestions of the Bureau of State Audits in a written response. The Commission agreed with many of the suggestions made and confirmed that with the new appointments to the commission this would be "an appropriate time to revisit the manner in which the Commission reviews and updates the strategic plan, quantifies performance measures, and reports on progress". We are currently taking steps to review and update this plan.

1. What steps can the Commission take to better anticipate future reduction and take appropriate action to maintain a balanced budget?

The Commission has already taken step to better maintain a balanced budget. Under the direction of commissioners, staff researched and presented several options to reduce expenditures and increase efficiencies. As a member of this team, I will continue to encourage staff to look for creative and resourceful ways to ensure the Commission maintains a balanced budge for future years.

4. Do you believe increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit?

Given the deficit of the Commission and the current issues with the State's budget, I do believe that an increase in the teacher credential fee is an appropriate solution. Recently, Conference Committee to action to change Budget Bill language, which increases the credentialing fee from \$55 to \$67.50 per application.

Sincerely,



Maytte Bustillos

M. Bustillos

August 18, 2005

Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senate Rules Committee,

Once again I thank you for taking the time to review the material necessary for my confirmation hearing. Below are the responses to the additional questions asked.

1. A lawsuit was recently filed against the California Commission on Teacher Credentialing for allegedly improperly classifying participants of a new certificate internship program as "highly qualified" to meet standards required by the federal No Child Left Behind Act. How do you respond to this charge?

Due to the current litigation, I respectfully decline to respond to this question.

2. What is the purpose of establishing "individualized" certificate internship program that is separate and distinct from existing university or district-run internship programs?

The "individualized" certificate internship program was designed only for those who do not have a formal district or university sponsor. Participants of this program receive mentoring and supervising, which are key elements in other certification programs.

3. Will teachers with emergency permits who participate in the certificate internship program be fully credentialed by the end of 2005-06 school year, as required by No Child Left Behind? How should the state respond to instances where teacher continue to hold emergency permits beyond the federal deadline?

There is a high probability that all teachers with emergency permits will not be fully credentialed by the end of 2005-06 school year due to various factors. It is the Commission's duty to uphold all federal and state laws while ensuring that there be a supply of prepared and qualified educators in California. Provided that teachers with emergency permits have received information about their status and about the procedures for becoming fully credentialed, it is my opinion that the state must uphold the deadline and release teachers with emergency permits until further credentials have been acquired. This is not to say that the state cannot be creative with options for such persons. For example, a district may "hold" a teacher's position for one school year, if proper credentials are acquired in that time period.

M. Bustillos

4. The new certificate internship program requires participants to meet several requirements such as completion of an undergraduate degree and attainment of subject matter competency. What should the state be doing to help under-prepared teachers who do not meet these minimum requirements and are not in compliance with federal "highly qualified teacher" requirements?

The state has a responsibility to ensure that persons entering the teaching profession are of the highest quality. In keeping with this responsibility, the state may allow for universities or others to offer "preparation or study" courses for those who need assistance. In addition, the state should begin to examine the undergraduate programs and think about a "pre-education" Bachelor of Arts as a new requirement for entering a teacher credential program. As in other professions (law and medicine), an undergraduate student needs to have taken specialized courses before entering post-graduate studies. By having undergraduate students focus early on the pre-requisites, we can ensure that more students will meet the several requirements and be more prepared for the completion of the teacher-credentialing program.

Thank you for your time.

Sincerely,

Maytte Maria Teresa Bustillos

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 23, 2005

Paul Lawrence Clopton
5224 Lodi Street
San Diego, CA 92117

Dear Mr. Clopton:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment to the California Commission on Teacher Credentialing.

Following are questions we would like you to address in writing prior to the Committee hearing. Please have this information returned to our office by June 13, 2005 so that committee members will have sufficient time to review the material before your confirmation hearing.

Questions:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?
2. The Bureau of State Audits published an audit report of the CTC in October 2004 identifying several issues in need of improvement. One of the issues was that CTC should provide stronger evaluation of its programs, including better performance review of the teacher credentialing process and its customer service activities. How has the CTC responded to this issue and what changes does it propose?
3. A major source of CTC's funding for state operations is generated from two special fund sources that derive fees from the processing of teacher credentials and the administration of various required educator exams. This past year, there has been a significant drop in credential and testing volume due to changes in

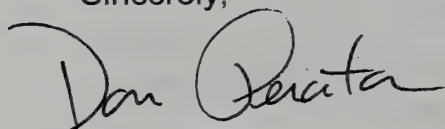
the teacher workforce. This change has caused a projected CTC shortfall of \$3.6 million for the 2005-06 budget year. What steps can the Commission take to better anticipate future reductions and take appropriate action to maintain a balanced budget?

4. Current statute authorizes credential fees of \$70; however, due to earlier growing reserves, the fees were reduced to \$55. This has substantially reduced revenues for the CTC over the past five years. According to the LAO, a \$5 increase in the application fee would raise revenues by \$1.1 million that could be used to offset the CTC's funding shortfall. Do you believe increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit? Please explain.

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,



DON PERATA

DP:MG:gd

Paul L. Clopton

June 11, 2005

Don Perata, Chairman
Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814

Dear Chairman Perata:

I am in receipt of your letter of May 23, 2005, requesting written responses to four questions prior to a confirmation hearing on my appointment to the California Commission on Teacher Credentialing. Below I briefly identify each question and respond:

Question 1 – Statement of goals

As a medical research statistician in an academic environment, I am a firm believer in data-driven decision making. I also believe that existing data should be utilized to the fullest extent possible to address important questions. As applied to the Commission, I want to utilize data toward the goals of maximizing the availability of the most effective teachers for all students in California while improving the processing efficiency that teacher-applicants and taxpayers both deserve.

Question 2 – Commission response to audit report

The audit report raised concerns about internal evaluations of the teacher credentialing process and customer service activities. The Commission responses, however, pay more attention to the teacher-development programs administered by the Commission as one of its related functions. Attention to performance measures could be strengthened to further improve service functions. For example, the Commission attends to self-study with respect to the statutory 75-day maximum processing time by producing a report of average processing time. A simple performance-improvement model would flag cases above a critical window, such as 60 days, and escalate those cases to supervisory personnel. The Commission report should then track not only average processing time but also percent of overdue cases, identify barriers to timely processing, and eliminate these barriers so that the number of overdue cases reduces to zero.

Question 3 – Anticipating budget shortfalls and balancing the Commission budget

The audit report correctly notes that the Commission should anticipate the budget shortfall. The attribution of the shortfall to the periodic decline in applications is an oversimplification. The Commission has two sources of funds – fees for exams that are required to balance the costs of developing and administering the exams, and fees for credential application processing. The latter source of funds, therefore, must also cover the management of teacher development programs, the review and accrediting processes for teacher education institutions, policy development, and teacher discipline functions. The costs of these additional functions do not vary directly with the number of teacher applications and some expenditures may actually grow while application rates decline. Despite this complexity, the Commission should still anticipate budgetary changes. I believe that the Commission actually did anticipate shortfalls but in a climate of statewide resource limitations the Commission was unable to resolve this problem either through increased revenues or decreased costs. Faced with these issues, the Commission should: 1) Document revenue and cost projections along with actual accounting data to show the accuracy or lack thereof in anticipating budgetary status year to year, 2) Produce self-study reports of possible cost-savings alternatives that are maintained historically, and 3) Implement as many cost-saving process improvements as possible. Any other state agency should do the same.

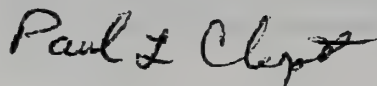
Question 4 - Increasing the credential fee to offset funding shortfall

While statutory limits permit a credential fee up to \$70, recent budget acts have limited the fee to \$55, effectively capping a major source of revenue to the Commission. Raising the fee is an option that has been considered as a means to relieve the funding shortfall. In attempts to deal with the shortfall, recent Commission action has identified numerous cost-saving options for legislative consideration. Many of these required statutory changes. I believe that this was responsible behavior on the part of the Commission in an era of tight budgets statewide. Having taken these steps, it was also expected that not all of these cost-saving measures would be deemed desirable or practical to the legislature. When Senate and Assembly Committees differed on budget act revisions, the Commission then voted to approve an increase in the application fee to match the recommendation in the Senate version. Ultimately, the conference committee sided with the Assembly version that did not include the fee increase but instead included a "bail-out" from the General Fund. While this result solves the shortfall for the upcoming year, the budgetary imbalance will surface again next year. Lacking changes to revenue sources, cost savings measures are unlikely to resolve the budget shortfalls. Therefore either exam fees or credential application fees will ultimately have to rise. Of these two choices, exam fees impact new teacher applicants on the order of hundreds of dollars while credential fees impact new and renewal applicants on the order of tens of dollars. Therefore, having made genuine efforts to find available cost-savings alternatives, all indications are that an increase in credential fees will have to be reluctantly supported in the future.

I hope that these answers sufficiently address the issues raised in the questions. I look forward to further discussion of issues related to the Commission and of interest to the Legislature.

Thank you for your attention to this matter.

Sincerely,



Paul L. Clopton

Paul L. Clopton

5224 Lodi Street
San Diego, CA 92117-1132
(858) 273-2819 voice
(858) 273-1829 fax
paul@clopton.com
pclopton@ucsd.edu

August 22, 2005

Senator Don Perata, Chairman
Senate Rules Committee
C/O Nettie Sabelhaus, Director
Rules Committee Appointments
State Capitol, Room 420
Sacramento, CA 95814

Honorable Don Perata:

Thank you for the opportunity to provide further information concerning the role and responsibilities of the state Commission on Teacher Credentialing (CTC). The most recent questions and my responses follow:

1. *A lawsuit was recently filed against the California Commission on Teacher Credentialing for allegedly improperly classifying participants of a new certificate internship program as "highly qualified" to meet standards required by the federal No Child Left Behind Act. How do you respond to this charge?*

On August 11, 2005 the members of the CTC were first briefed in Closed Session regarding the pending litigation and admonished not to discuss the matter publicly. We were not provided a copy of the allegation and my acquaintance with the litigation is limited to some newspaper coverage. I encourage the Senate to address CTC staff directly in closed session for more details concerning this litigation. It is my understanding that "highly qualified" under No Child Left Behind is a distinction that is negotiated between the California State Board of Education and the United States Department of Education. Therefore, it would seem to me that this juncture is where the question should best be raised.

2. *What is the purpose of establishing a new "individualized" certificate internship program that is separate and distinct from existing university or district-run internship programs?*

I was not a member of the CTC at the time of this decision, but I shall respond to the best of my ability. According to the goals of the CTC elaborated in it's strategic plan, and consistent with the general strategy of CTC procedures, the certification process typically involves multiple routes to certification to provide the greatest flexibility and least impediments to certification so as to maximize the available pool of qualified teachers for California schools. Under the internship program, which was deemed to be a route to producing highly-qualified teachers, the intern supervision or mentoring was initially provided by a university-run or district-run program. This design left some gaps for teacher candidates that were either displaced physically from such programs or displaced temporarily from the entry-points for

such programs due to inconsistencies in scheduling. It is my understanding that the individualized internship is designed to provide intern supervision on an individualized basis through contractual arrangements involving the university and/or district. As such, I conceptualize the individualized program as an alternative supervision model to add greater flexibility for students whose particular circumstances make the traditional university or district mentoring difficult.

3. *Will teachers with emergency permits who participate in the certificate internship program be fully credentialed by the end of the 2005-06 school year, as required by No Child Left Behind? How should the state respond to instances where teachers continue to hold emergency permits beyond the federal deadline?*

It is my understanding that emergency permits have been eliminated. Teachers who have emergency permits are not necessarily qualified for entry into internship programs. There is a subset of teachers who have held emergency permits that are also qualified for the certificate internship program. If teachers in that subset complete the internship program by the end of the 2005-06 school year then they will meet the requirements of No Child Left Behind.

The second part of the question refers to teachers that continue to hold "emergency permits". It is my understanding that emergency permits will no longer be honored. Should individuals in this category continue to be interested in a teaching career, they should be encouraged to follow one of the routes to certification offered in California.

4. *The new certificate internship program requires participants to meet several requirements such as completion of an undergraduate degree and attainment of subject matter competency. What should the state be doing to help under-prepared teachers who do not meet these minimum requirements and are not in compliance with federal "highly qualified teacher" requirements?*

An undergraduate degree and subject matter competence are critical components of teacher certification and No Child Left Behind. These are achievements that teacher candidates are expected to attain through their higher education experiences, and the state is not and should not be in a position to relax these requirements. However, the state must also take a proactive stance if there is any risk of an under supply of teachers who meet these requirements. Programs that encourage careers in teaching, special support programs for subject matter competence, and financial incentives are examples of state programs that can increase the supply of teachers who meet these requirements.

Thank you once again for the opportunity to assist the Rules Committee in clarifying some of the issues facing a newly appointed member of the CCTC. Please do not hesitate to contact me if additional information is needed.

Sincerely,

Paul Clopton

To: Senate Rules Committee

June 13, 2005

Attn.: Don Perata
Chairman

From: Guillermo Gomez
Commissioner,
California Commission on Teacher Credentialing

RE: Questions (4)

Q # 1 - Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?

I am, concerned. There appears to be a very large gap between the services that we provide as a Commission and the needs of: teachers, administrators, and the general public. We are a Commission on Accreditation, but we appear to have removed ourselves from this business some time ago. I will expand on this topic in some detail in the many questions contained in this document, but we must return to the business of service in the two vital areas of, teacher preparation and program accreditation. It is my belief that we as a Commission must be seen as an informed body that is willing to work with organizations to provide better channels of communication in regards to both of these important areas. Your last two questions in this survey must be seen as financial concerns that rocket back to providing support to these two vital areas.

Q # 2 - The Bureau of State Audits published an audit report on the CTC in 2004 identifying several issues in need of improvement. One of the issues was that CTC should provide stronger evaluation of its programs, including better performance review of the teacher credentialing process and its customer service activities. How was the CTC responded to this issue and what changes does it propose?

I have read the report. Unless I am very wrong, the CTC proposed that you make legislative changes to the Education Code that would expand their powers and in addition, that you increase funding to enact these two measures. I was not a Commissioner at that time and am very disappointed that many of the responses are tied to \$\$\$ and not to the resources the Commission has at its disposal.

This being said, I believe the electronic processing systems that have recently been added to accelerate the credential processing, should free Commission personnel to provide speedier responses to both teachers and the public in many areas. As a teacher, I have used this system myself, and I was pleasantly surprised when my credential arrived fourteen days after I filed my documentation on-line. We are making, progress.

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Surely we must automate more and provide the universities with web-sites that reduce the paperwork that is physically produced for accreditation and press for more accountability to the suggestions that are recommended within a timely manner.

Q # 3 – A major source of CTC's funding for state operations is generated from two special fund sources that derive fees from the processing of teacher credentials and the administration of various required educator exams. This past year, there has been a significant drop in credential and testing volume due to changes in the teacher workforce. This change has caused a projected CTC shortfall of \$3.6 million for the 2005-06 budget year. What steps can the Commission take to better anticipate future reductions and take appropriate action to maintain a balanced budget?

We should be grateful we have this problem. The drop in revenues means there are more credentialed teachers in our classrooms.

Be that as it may, we must be physically responsible and not spend more than we take in. We have proposed:

- Raising the fees of existing exams by \$6 dollars per exam
- Raising the credential fee to \$67.50

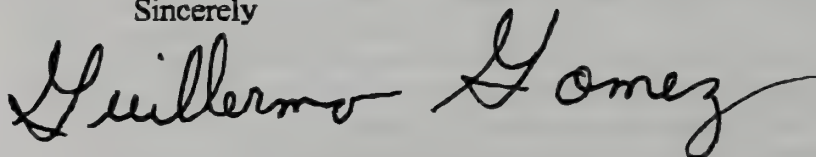
This is the price for success in many ways. While the first cost will impact new teachers more, the latter cost increase is spread out over five years for veteran teachers. It is the best decision to be made in very delicate financial times.

Q # 4 Current statutes authorize credential fees of \$70?....Do you believe that increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit? Please explain.

Yes. I am a professional teacher. I know in their hearts that teachers do not wish to diminish the services that we provide them by cutting corners to what is extremely serious business, providing our state with students that are fully prepared to enter our future workforce. If we wish to achieve this, clearly our actions must match our intentions.

Thank you for time,

Sincerely



Guillermo Gomez
Commissioner,
Commission on Teacher Credentialing

To: Senate Rules Committee
Attn.: Don Perata

From: Guillermo Gomez
Commissioner,
Commission on Teacher Credentialing

August 22, 2005

A few short responses to your four additional questions as requested.

1. A lawsuit was recently filed against the California Commission on Teacher Credentialing for allegedly improperly classifying participants of a new certificate internship program as "highly qualified" to meet standards required by the federal No Child Left behind Act. How do you respond to the charge?

I answer this question with reservation, because there is pending litigation that has yet to run its full course. The only thing I can say, (since these matters took place years before we were appointed), is that CTC was at one time trying to provide resources to school districts that were in jeopardy of not meeting the NCLB standards for proper teacher staffing. I do not believe that CTC acted beyond its authority and if the internship program is seen as illegal or not compatible with the spirit of NCLB, they we will alter our position. As a body, we are nothing if not f-l-c-x-i-b-l-e.

2. What is the purpose of establishing a new "individualized" certificate internship program that is separate and distinct from existing university or district-run internship programs?

To the best of my knowledge this "individualized" certificate was to be a short-term solution to what may become a long-term problem in providing certificated teachers to remote locations where universities are not readily present and school districts do not have the personnel to facilitate district-run internship programs for teachers. The alternative preparation was only meant to be a stop-gap measure for small districts that were having difficulty staffing positions that could not be extended beyond a two year window of support.

3. Will teachers with emergency permits who participate in the certificate internship program be fully credentialed by the end of the 2005-06 school year, as required by No Child Left Behind? How should the state respond to instances where teachers continue to hold emergency permits beyond the federal deadline?

The state has provided districts with structured support that has moved upon a timeline that meets the requirements of NCLB. It is incumbent on districts to self-regulate themselves and not push for extensions that will punish the entire states programs over the challenges of a few remote districts.

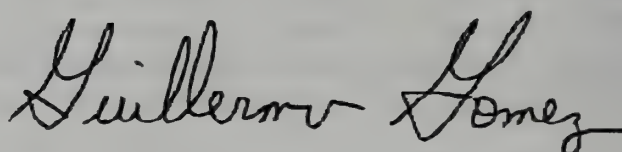
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4. The new certificate internship program requires participants to meet several requirements such as completion of an undergraduate degree and attainment of subject matter competency. What should the state be doing to help under-prepared teachers who do not meet these requirements and are not in compliance with federal "highly qualified teacher" requirements?

When it comes to the undergraduate requirements, we should be doing nothing. The completion of an undergraduate degree is your ticket to entering our profession. I cannot fathom lowering instructional requirements for a profession that is preparing students to achieve literacy in the twenty-first century. Let there be no doubt, the literacy requirements for students of this state will be much higher in the near future. We cannot expect to provide our state with a workforce for the next century by lowering the linguistic demands on the teachers of the present one.

Thank you for the opportunity to address your concerns.

Sincerely,



Guillermo Gomez
Commissioner,
California Commission on Teacher
Credentialing

June 8, 2005

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, California 95814

Dear Ms. Sabelhaur

The following are my responses to your questions. I understand this information is needed before my confirmation hearing.

Question:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?

Answer:

My goals are as follows:

To ensure that all classroom teachers and those who work with children in our schools have the preparation necessary to become *highly qualified* with the necessary tools to teach *all* children based on the California Standards.

To ensure that the accreditation process and credentialing is aligned with the K-12 California Standards as mandated by AB2042.

To help ensure that the Commission keeps the needs of our #1 customer, the children in California schools, as the reason why the work of the Commission is so important and to represent all children in our efforts.

Question:

2. The Bureau of State Audits published an audit report of the CTC in October 2004 identifying several issues in need of improvement. One of the issues was that CTC should provide stronger evaluation of its programs, including better performance review of the teacher credentialing process and its customer service activities. How has the CTC responded to this issue and what changes does it propose?

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Answer:

During our May 31-June 1 Commission meeting, Commissioners made it very clear to staff that the implementation of the CTC Bureau of State Audits recommendations are supported by the Commission and should be the focus of the goals and objectives for 2005-2006. The Commission focused on resuming and implementing the accreditation process, improving the credentialing process (in some cases simplifying the process) and ensuring that those in need of the services supplied by the Commission receive quality customer service.

Question:

3. A major source of CTC's funding for state operations is generated from two special fund sources that derive fees from the processing of teacher credentials and the administration of various required educator exams. This past year, there has been a significant drop in credential and testing volume due to changes in the teacher workforce. This change has caused a projected CTC shortfall of \$3.6 million for the 2005-2006 budget year. What steps can the Commission take to better anticipate future reductions and take appropriate action to maintain a balanced budget?

Answer:

The Bureau of State Audits recommends that the CTC conduct an analysis of data that is more detailed for the purpose of making projections of future revenue and expenditures. The Commission is currently looking at what is the essential work of the Commission and developing priorities such as accreditation, credentialing and teacher preparation. While examining the essential work of the Commission, the Commission is also conducting an ongoing examination of income and expenditures. The goal is to come to agreement on priorities and allocating funds to meet the needs of priorities such as accreditation and credentialing.

Question:

4. Current statute authorizes credential fees of \$70; however, due to earlier growing reserves, the fees were reduced to \$55. This

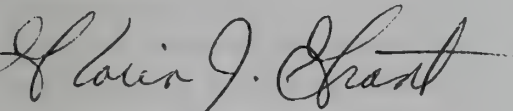
has substantially reduced revenues for the CTC over the past five years. According to the LAO, a \$5 increase in the application fee would raise revenues by \$1.1 million that could be used to offset the CTC's funding shortfall. Do you believe increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit? Please explain.

Answer:

Increasing teacher credentialing fees is one solution to addressing the budget deficit. The CCTC made a decision to implement a technology-based credentialing process which has exceeded its budget. Funds to complete the project were borrowed from the testing and credentialing funds. The elimination of the "emergency credential" has also reduced income from fees. Careful and accurate analysis of expenditures and projections along with increased fees would ease the budget deficit.

I hope the above answers meet the needs of the Senate Rules Committee.

Sincerely,

A handwritten signature in cursive script, reading "Gloria J. Grant". The signature is written in dark ink and is positioned above the printed name and title.

Gloria J. Grant
Commissioner, CCTC

August 18, 2005

Senator Don Perata, Chairman
Senate Rules Committee
C/O Nettie Sabelhaus
Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, Calif. 95814

Honorable Don Perata,

It's a pleasure to be able to address the Senate Rules Committee again regarding the role and responsibilities of the State Commission on Teacher Credentialing.

In regards to question number one, I was advised by Staff Counsel Mary Armstrong, that this is considered current litigation and should not be discussed outside of Closed Session. Since I was not on the Commission at the time this internship program was approved, I do not have first hand information on the issues surrounding the approval of the program. I do understand that the qualifications of the internship program met the same standards and level of expectations as a program at the university level. I do know that across the nation there are approximately 450 alternative-certification programs offered by universities, community colleges, school districts and even state education departments. I also understand that about 35,000 new teachers are earning their certificates through alternative routes each year. Findings by the National Center for Alternative Certification show that 47 percent of those taking alternatives routes say that they would not be able to pursue a teaching career if it weren't for such programs. These programs are attracting more men, more minority candidates and more older adults than the typical teacher-preparation programs.

Question 2: What is the purpose of establishing a new "individualized" certificate internship program that is separate and distinct from existing university or district-run internship programs?

It allows those with a BS or BA in a subject matter to take the CSET and teach at the high school level in those areas in need of knowledgeable teachers particularly in the areas of math and science.

Question 3: Will teachers with emergency permits who participate in the certificate internship program be fully credentialed by the end of the 2005-06 school year, as required by NO Child Left Behind? How should the state respond to instances where teachers continue to hold emergency permits beyond the federal deadline?

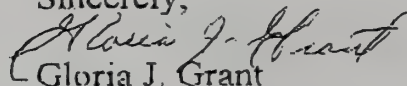
Emergency permits have been eliminated. The Provisional Internship Permit replaced the Emergency Permit. This was a result of Regulation 80021. The Provisional Internship Permit expires after June 30, 2006. The Short Term Permit will allow some candidates who can substantiate extenuating circumstances an additional year to complete the requirements of the Provisional Internship Permit. Those candidates with genuine extenuating circumstances should be the only teachers without valid California Teaching Credentials in California classrooms.

Question 4: The new certificate internship program requires participants to meet several requirements such as completion of an undergraduate degree and attainment of subject matter competency. What should the state be doing to help under-prepared teachers who do not meet these minimum requirements and are not in compliance with federal "highly qualified teacher" requirements?

Teachers who fail to attain a BA or BS degree, and who can't pass the subject matter exam should not be allowed to continue as a classroom teacher until they do so. Passage of the CBEST exam should also be a requirement. These are necessary and fundamental steps and basic requirements for all teachers. The state might look at ways to provide additional targeted course work, support programs outside of the classroom and mentors to help those teachers who do not meet the minimum requirement. I do not feel that the deadline for completion based on the No Child Left Behind guidelines should be extended.

Again it's my pleasure to address the Senate Rules Committee.

Sincerely,



Gloria J. Grant

88 Montwood Way

Oakland, California 94605

rgrant6116@aol.com

701 Oleander Avenue
Bakersfield, CA 93304
(661) 327-3805

June 13, 2005

Ms. Nettie Sabelhaus,
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

Dear Ms. Sabelhaus:

In response to Mr. Perata's, Chairman of the Senate Rules Committee, request for written information addressing specific questions related to the California Commission on Teacher Credentialing, I submit the following brief summary. I understand this information will be used in a confirmation hearing regarding my appointment to the Commission.

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?

- During my tenure as a member of the California Commission on Teacher Credentialing (CTC), I hope to accomplish three discrete goals:
 - a) Contribute to a highly qualified educational community in California through a teacher credentialing process that ensures the professional standards.
 - b) Construct policy that will serve as the architecture for effective learning communities.
 - c) Communicate the mores, ethics and integrity of the Commission in all the decisions and inquiries undertaken.

2. The Bureau of State Audits published an audit report of the CTC in October 2004 identifying several issues in need of improvement. One of the issues was that CTC should provide stronger evaluation of its programs, including better performance review of the teacher credentialing process and its customer service activities. How has the CTC responded to this issue and what changes does it propose?

- I am in agreement with the audit report that stronger and timelier evaluations are needed. I believe data and feedback should drive decision-making.
- The Commission on Teacher Credentialing has established effective performance reviews as a high priority. In addition, the following activities contribute to this priority:
 - a) simplification of the accreditation;
 - b) improved relationships with colleges and universities;

- c) better dissemination of information about credentialing.
- The CTC customer service activities have been reorganized through advance technology, improved information to constituents and better communication through accreditation sites. The reduction of CTC staff due to budget restraints has required the Commission to creatively use technology and other resources.
3. *A major source of CTC's funding for state operations is generated from two special fund sources that derive fees from the processing of teacher credentials and the administration of various required educator exams. This past year, there has been a significant drop in credential and testing volume due to changes in the teacher workforce. This change has caused a projected CTC shortfall of \$3.6 million for the 2005-06-budget year. What steps can the Commission take to better anticipate further reductions and take appropriate action to maintain a balanced budget?*
- A balanced budget requires the Commission to have an effective strategic plan. This plan should forecast accreditation needs, teacher recruitment and shortages. The Commission needs to provide adequate opportunities for reflection on decisions that impact our educational system. California has the ability to sustain accurate records of the economic condition that impact the Commission's objectives.
4. *Current statute authorized credential fees of \$70; however, due to earlier growing reserves, the fees were reduced to \$55. This has substantially reduced revenues for the CTC over the past five years. According to the LAO, a \$5 increase in the application fee would raise revenues by \$1.1 million that could be used to offset the CTC's funding shortfall. Do you believe increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit? Please explain.*
- I believe that increasing the teacher-credentialing fee is an appropriate solution to address CTC budget deficit. At this point we are recommending a fee increase that has been the norm prior the 2001 reduction when the CTC coffers were full. At \$70 we would return to self-sufficiency and be able to implement the recommendations of the audit report.

I appreciate the opportunity to respond. Please let me know if further information is needed.

Sincerely,



Aida L. Molina

701 Oleander Avenue
Bakersfield, CA 93304
(661) 327-3805

August 21, 2005

Honorable Don Perata, Chairman
Senate Rules Committee
C/O Ms. Nettie Sabelhaus
Room 420
State Capitol
Sacramento, CA 95814

Dear Honorable Chair Perata and Honorable members of the committee:

Thank you for this additional opportunity to provide further clarification to the Senate Rules Committee for my confirmation hearing. It is my intention to usher that the California Commission on Teacher Credentialing becomes a more available resource to Californians. The following is submitted in response to your questions:

1. A lawsuit was recently filed against the California Commission on Teacher Credentialing for allegedly improperly classifying participants of a new certificate internship program as "highly qualified to meet standards required by the federal No Child Left Behind Act. How do you respond to this charge?

➤ Although a critical question, Legal counsel from CCTC has advised commissioners not to comment regarding the current litigation.

2. What is the purpose of establishing a new "individualized" certificate internship program that is separate and distinct from existing university or district-run internship programs?

➤ Establishing a new "individualized" certificate program provided increased flexibility to accommodate district demands. This was particularly important for districts that needed teachers. Those individuals who participated in an internship program had to satisfy the following requirements: Bachelor's degree; passing CBEST, subject matter competency, character fitness and either be credential or be enrolled in a program.

3. Will teachers with emergency permits who participate in the certificate internship program be fully credentialed by the end of the 2005-06 school year, as required by No Child Left Behind? How should the state respond to

instances where teachers continue to hold emergency permits beyond the federal deadline?

- A teacher with an emergency permit has two years to complete an internship program. Those who participate in the certificate internship program must meet all requirements by the end of 2005-2006 and should be fully credentialed and able to meet the standards set by NCLB.
4. *The new certificate internship program requires participants to meet several requirements such as completion of an undergraduate degree and attainment of subject matter competency. What should the state be doing to help under prepared teachers who do not meet these minimum requirements and are not in compliance with federal "highly qualified teacher" requirements?*
- Teachers that are under-prepared and do not meet minimum requirement for "highly qualified teacher" need to finish school and internship requirements. At this point, the state is not responsible to intervene for under-prepared teachers that have not completed aspects of their training.

I hope the above information serves the Senate Rules Committee. Please advise if further information is necessary.

Sincerely yours,



Aida L. Molina

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 23, 2005

Leslie Peterson Schwarze
56 Clemente Court
Novato, CA 94945

Dear Ms. Schwarze:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment to the California Commission on Teacher Credentialing.

Following are questions we would like you to address in writing prior to the Committee hearing. Please have this information returned to our office by June 13, 2005 so that committee members will have sufficient time to review the material before your confirmation hearing.

Questions:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?
2. The Bureau of State Audits published an audit report of the CTC in October 2004 identifying several issues in need of improvement. One of the issues was that CTC should provide stronger evaluation of its programs, including better performance review of the teacher credentialing process and its customer service activities. How has the CTC responded to this issue and what changes does it propose?
3. A major source of CTC's funding for state operations is generated from two special fund sources that derive fees from the processing of teacher credentials and the administration of various required educator exams. This past year, there has been a significant drop in credential and testing volume due to changes in


the teacher workforce. This change has caused a projected CTC shortfall of \$3.6 million for the 2005-06 budget year. What steps can the Commission take to better anticipate future reductions and take appropriate action to maintain a balanced budget?

4. Current statute authorizes credential fees of \$70; however, due to earlier growing reserves, the fees were reduced to \$55. This has substantially reduced revenues for the CTC over the past five years. According to the LAO, a \$5 increase in the application fee would raise revenues by \$1.1 million that could be used to offset the CTC's funding shortfall. Do you believe increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit? Please explain.

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,


DON PERATA

DP:MG:gd

June 13, 2005

Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Dear Honorable Chair Perata and Honorable Members of the Committee,

Below are my written responses to the questions asked regarding my confirmation hearing for the California Commission on Teacher Credentialing. I will be glad to answer any other questions you may have in the process of determining my ability to serve the State of California in this capacity.

1. As an elected member of the Board of Trustees for the Novato Unified School District, my original reasons for wanting to serve on the CCTC stemmed from a consumer perspective. For the past seven years I have listened to site administrators and Human Resource officers complain about the pre-service preparation of new teachers they have hired to work in Novato schools. Further, veteran teachers often express frustration in communicating with the CCTC.

Prior to the questions posed for my confirmation hearing, I had no knowledge of the Bureau of State Audits report published last fall. After reading the document, I was satisfied to note my personal goals for wishing to serve on the Commission are aligned with the recommendations of the report. My highest priority for the Professional Services division is to resume accreditation and ensure that the process is aligned with SB2042. Teachers must have the necessary preparation in their 5th year programs. Only then are they able to enter the workforce, qualified and capable of teaching their students the State Standards in content areas in which they are credentialed. My highest priority for the Certification division is to improve our customer service response time and the manner in which we respond. Currently the website is difficult to navigate and the telephone system is only available during limited hours that are not suited to the teacher workday.

2. At the May/June CCTC meeting, Commissioners were asked to approve staff recommended goals and objectives for 2005-2006. At that time, Commissioners voiced a desire to include the recommendations from the Bureau of State Audits report although they were not a part of the staff recommended goals.

In an effort to implement these recommendations, the Vice Chair and I will be forming a work study group to analyze the process and determine the best way to move forward. I prefer to have a representative from the Bureau of State Audits present at these meetings to clarify any questions regarding the intent of the report.

3. The Commission must establish standard practices regarding data analysis. There is a tremendous amount of information available regarding the number of students in credentialing programs, the number of teachers approaching retirement, and the number of credentials renewed annually, etc.

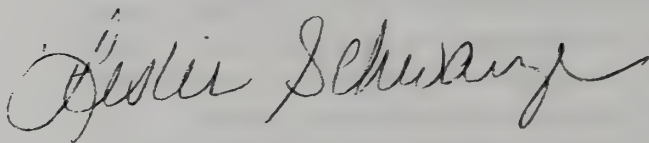
This data should be used in a proactive manner to determine staffing projections. When our output exceeds our intake, we must consider ways to economize and streamline all of our procedures so we can develop and maintain a balanced budget.

4. I do not believe we should increase credentialing fees. However, I do believe we should restore fees to the authorized limit.

The CCTC is designed to be a self-funded agency that does not draw on the general budget. In reviewing other licensing agencies and their fees, the authorized amount seems reasonable. For teachers, it compares to a group insurance fund that costs \$14 per year. Currently, the CCTC is not issuing licenses within the regulatory 75 day processing time, nor is it meeting its obligation to accredit institutions. Both of these serious shortcomings would be remedied (with a balanced budget) through a combination of revenue enhancement via fee restoration, in concert with projected cost savings.

I appreciate this opportunity to clarify my position on the serious matters facing the California Commission on Teacher Credentialing. I believe my answers provide the necessary insight into my thought process and will allow you to make this decision in my favor.

Sincerely,

A handwritten signature in cursive script, reading "Leslie Peterson Schwarze". The signature is fluid and written in dark ink.

Leslie Peterson Schwarze

August 22, 2005

Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Dear Honorable Chair Perata and Honorable Members of the Committee,

Thank you very much for allowing me the opportunity to answer these additional questions regarding my confirmation hearing. Please know that it is my goal to insure that the CCTC becomes a more responsive agency serving the needs of California students, teachers, and school districts.

1. I would very much like to answer this question, but legal counsel for the CCTC has advised Commissioners that we are to make no comments regarding the current litigation. However, I have requested that the Honorable Members of the Committee be provided with the legal response that is to be presented to the court on August 24th.
2. District demand prompted the inclusion of an IIC program among the options available. The IIC was specifically developed to accommodate those teachers who, for varied reasons, didn't fit into the other options available. Some examples are: no university intern program available, and not enough openings in their school district internship program. This increased flexibility allows candidates who could not be accommodated through the existing programs to continue pursuing their credential once they have met the internship parameters established. By expanding the options the State is in a better position to meet the needs of our students regarding No Child Left Behind because the IIC candidates must meet the *same* requirements as the other interns.
3. As of June 30, 2006, anyone holding an emergency permit who is not enrolled in a state program will have to leave the field. (Currently there are only about 10,000 emergency permits—the lowest count we have ever had). Because of pressure placed by the Legislature and the field the CCTC has aggressively moved to transition incoming teachers to the required Highly Qualified status through the new more restrictive system than emergency permits provided. Because students in internship programs, including IIC, have "subject matter competency" as their leading qualification and requirement, they are fully credentialed upon completion of their program. Prior to the new system someone on emergency permit could teach for up to five years—often without adequate supervision and possibly never even completing their program. Now the candidates have two years and the parameters they operate under genuinely prepare them to be identified as highly qualified by federal definition. If after the deadline districts are still employing emergency permit teachers I would think this was an opportunity to withhold

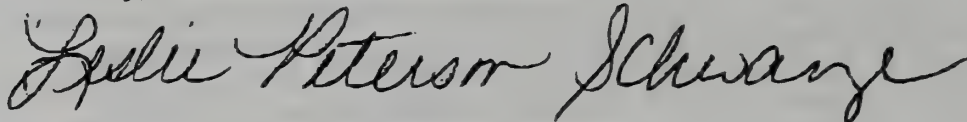
AUG 22 2005

funding as the district would no longer be in compliance with state and federal regulations.

4. Theoretically there are no candidates in the current internship programs who are underprepared. They must meet the various requirements necessary to complete their program and they are more rigorous than ever before. This is especially true for multiple subject credential holders as they must pass the CSET, unlike single subject credential holders who may either take the exam or participate in an approved subject matter program. However, districts have also had to demonstrate that veteran teachers are highly qualified and they participate in the HOUSSE program if hired prior to 2002. It is my opinion that the requirements for the HOUSSE program are far less vigorous than for our newest teachers. I believe the state has made admiral progress to support ALL teachers through the current staff development programs such as AB466 and AB75. Ongoing staff development is the best investment we can make to insure our teachers are adequately prepared to teach California's students.

As before, I appreciate this opportunity to clarify my position on the serious matters facing the California Commission on Teacher Credentialing. I am hopeful that you will allow me the honor of serving on this Commission so that I may be a participant in making public education the best it can be for *ALL* students in the state of California. Thank you once again for your consideration.

Sincerely,



Leslic Peterson Schwarze

CALIFORNIA LEGISLATURE

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GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 23, 2005

Jon M. Stordahl
141 Crescent Bay Drive
Laguna Beach, CA 92651

Dear Mr. Stordahl:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment to the California Commission on Teacher Credentialing.

Following are questions we would like you to address in writing prior to the Committee hearing. Please have this information returned to our office by June 13, 2005 so that committee members will have sufficient time to review the material before your confirmation hearing.

Questions:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the California Commission on Teacher Credentialing (CTC)?
2. The Bureau of State Audits published an audit report of the CTC in October 2004 identifying several issues in need of improvement. One of the issues was that CTC should provide stronger evaluation of its programs, including better performance review of the teacher credentialing process and its customer service activities. How has the CTC responded to this issue and what changes does it propose?
3. A major source of CTC's funding for state operations is generated from two special fund sources that derive fees from the processing of teacher credentials and the administration of various required educator exams. This past year, there has been a significant drop in credential and testing volume due to changes in

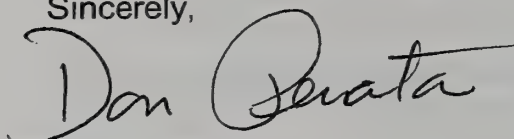
the teacher workforce. This change has caused a projected CTC shortfall of \$3.6 million for the 2005-06 budget year. What steps can the Commission take to better anticipate future reductions and take appropriate action to maintain a balanced budget?

4. Current statute authorizes credential fees of \$70; however, due to earlier growing reserves, the fees were reduced to \$55. This has substantially reduced revenues for the CTC over the past five years. According to the LAO, a \$5 increase in the application fee would raise revenues by \$1.1 million that could be used to offset the CTC's funding shortfall. Do you believe increasing teacher credentialing fees is an appropriate solution to addressing the CTC's budget deficit? Please explain.

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,



DON PERATA

DP:MG:gd

**SENATE RULES COMMITTEE
QUESTIONNAIRE RESPONSES
JON STORDAHL – COMMISSION ON TEACHER CREDENTIALING**

1. The top priority is to ensure that new teachers enter the classroom prepared to be successful. To accomplish this the Commission must make certain that the curriculum at the university level schools of education is properly aligned with the California state framework, meets all of the requirements of NCLB, and gives teaching candidates the classroom skills necessary for success. Also of critical importance is to see that the widest possible variety of teaching credential paths is available to students. The other area of focus for me would be to ensure that the CTC honor the 75-day turnaround for credential processing. This is simply a matter of good customer service.
2. I have not seen the audit to which you refer. I have requested a copy of this report from CTC staff and would be happy to respond to this question after properly reviewing the contents. I certainly agree that customer service is a top priority. As one of the "customers" of the CTC I recognize the essential nature of a quick and reliable credential renewal process.
3. As a newcomer to the Commission I am not fully aware of why the staff did not properly anticipate the decline in testing fee revenue generated by a decrease in the number of exams being taken. Curriculum changes at the university level guaranteed that the number of CLAD exams would decline and that this would have a sharp impact on revenues. I believe that there will be periodic fluctuations in the number of CBEST exams taken each year and that the Commission will have difficulty in anticipating these variances. The primary source of revenue, therefore, should be the credential renewal fees. These can be more accurately anticipated. Closer coordination with the Office of Finance and a much more rapid response to revenue changes will be essential to ensuring that this type of budget crisis does not repeat itself.
4. I believe that the credential renewal fees are the most logical source of revenue funding for the CTC. As an educator who must renew my credential every five years I view this as a user fee. This expenditure directly benefits the teacher and the profession by ensuring standards in professional development and the expeditious processing of paperwork for credential issuance and renewal. Comments made by many education stakeholders at the April Commission meeting echoed these views. I support the decision of the Senate Finance Committee to increase fees to \$67.50 in an effort to stabilize the financial position of the CTC.

JUN 13 2005

19. August 2005

Senate Rules Committee

Attention: **Nettie Sabelhaus**
Appointments Director

Senate Rules Committee Questionnaire Responses: **Jon Stordahl**

Dear Honorable Members of the Senate Rules Committee;

The following are my responses to the follow-up questions of the committee concerning issues relating to the California Commission on Teacher Credentialing.

1Q. A lawsuit was recently filed against the California Commission on Teacher Credentialing for allegedly improperly classifying participants of a new certificate internship program as "highly qualified" to meet standards required by the federal No Child Left Behind Act. How do you respond to this charge?

1A. I am a high school teacher. I do not understand the nuances of a lawsuit, however, at the August 11, 2005 meeting of the California Commission on Teacher Credentialing the Staff Counsel, Mary Armstrong, advised the members that issues that were the subject of current litigation could not be discussed outside of closed session. I would hope and expect that the staff of the CTC would provide a confidential briefing to the members of the Senate Rules Committee and that they keep that body fully apprised of the nature and status of this legal action.

I also feel incapable of answering this question due to the short nature of my participation on the CTC. I first became aware of this situation when I read it in the Los Angeles Times. The issues raised in the lawsuit regard matters addressed by the CTC well before my arrival.

The one thing that I would want to tell the members of the Senate Rules Committee on this matter is that the premise of the lawsuit, that holders of the Individualized Internship Certificates are less qualified, seems unfounded. Interns in this program are required to pass the CSET exam and have generally completed more course work than candidates in approved district or university internship programs. I have the sense that this program was not merely a semantics exercise to rename the old emergency permit program, but rather a wholly different option.

2Q. What is the purpose of establishing a new "individualize" certificate internship program that is separate and distinct from existing university or district-run internship programs?

2A. What I have been able to determine is that the IIC program began to meet district demand for alternatives to teacher preparation. It seems that the impetus of the IIC program was to create a viable option for candidates for whom no district internship slots or quality university intern programs were available. The candidates for the IIC program are expected to have met the internship parameters and be enrolled in the teacher prep system.

3Q. **Will teachers with emergency permits who participate in the certificate internship program be fully credentialed by the end of the 2005-06 school year, as required by No Child Left Behind? How should the state respond to instances where teachers continue to hold emergency permits beyond the federal deadline?**

3A. It is my understanding that all emergency permits will have expired by 6/30/06. Any holders of emergency permits who did transfer to the IIC program must have "subject matter competency" just to qualify under IIC. "Subject matter competency" is a necessary foundation to eventually be designated a "highly qualified teacher."

As the emergency permit designation expires on 6/30/06 any teacher holding such a permit and not enrolled in a state program will have to leave the classroom. To help incoming teachers more quickly attain the designation of "highly qualified teacher" the state has developed a much more restrictive system than the old emergency permit. Where the emergency permit holder had five years to earn a valid temporary or full credential, which many failed to do, the new internship program offers only a two-year time period with HQT parameters.

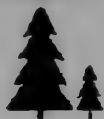
4Q. **The new certificate internship program requires participants to meet several requirements such as completion of an undergraduate degree and attainment of subject matter competency. What should the state be doing to help under prepared teachers who do not meet these minimum requirements and are not in compliance with federal "highly qualified teacher" requirements?**

4A. As a teacher who stands in front of 150 students everyday I know the intellectual demands placed on a teacher. A teaching candidate who has not completed a BS or BA program and successfully passed the CBEST should not be in a classroom. The district, university, and IIC internships are all designed to help candidates more quickly achieve the designation of HQT.

I have tried to answer these questions fully and to the best of my ability. If I can be of any further assistance please do not hesitate to call on me.

Respectfully yours,

Jon Stordahl

**JOHN W. CORBETT**

ATTORNEY AT LAW #56406



248

1801 OCEAN DRIVE MCKINLEYVILLE, CA 95519 PH: 707-839-0967 FAX: 707-840-0668

July 10, 2005

Dear Senate Rules Committee:

I will do my best to answer your questions. My general sense is some of the questions are geared more for urban regions. Our region has a significant number of impaired waterways. The number two impairments are temperature and sediment. A key to success in our region will be how effectively we address silvicultural or logging non-point source activities.

It is important for the committee to consider what role I have had in personally addressing these issues during my first term. I made the motion that reinstituted the application of Waste Discharge Requirements to silvicultural operations.

This was followed up by my making the motion(s) adopting Individual Waste Discharge Requirements in numbers greater than all the Regional Boards in the past had ever adopted.

I drafted the language providing for designating cumulative impact watersheds in the Timber Waivers and General Waste Discharge Requirements. This language was in turn adopted by all the Regional Boards. This simultaneously allows for greater regulation in such water sheds and does not burden with regulations less impacted watersheds.

Over 50% of the timber lands in the State of California are U.S. Forest Service lands. During the current decade the U.S.F.S. has been a leader silvicultural practices and has implemented cumulative impact provisions into their regulations. Historically, this has depended on the policies of the National Administration. I drafted and it was adopted the toughest cumulative impact standards in the State for the U.S. Forest Service operations. This provisions are triggered only based upon adverse results of the current operations. Provisions were also included for public input. These are major protections on 50% of California lands in case of a significant change in national policy for U.S. Forest Service Lands.

I drafted and made the motion for requiring Watershed Wide Waste Discharge Requirements for Elk and Freshwater.

I drafted and made the motion for a new super category of Waste Discharge Requirements for Elk and Freshwater.

I drafted and got adopted by the Regional Board the first watershed wide cumulative impact restrictions in the history of California.

I drafted and got adopted by the Regional Board the first cooperation by the California Department of Forestry to amend an existing THP to include additional provisions for water quality protection and mitigation not otherwise included in the Forest Practice Act for the sole purpose of increasing enforceability.

1. Goals:

Adopt watershed wide WDR's for Elk and Freshwater Creek.

Adopt as warranted supper Waste Discharge Requirements on the other timber Harvesters in the Elk and Freshwater watersheds.

- Complete the Klamath River TMDL on time and within budget.
- Find a legal regulatory way to accelerate the transition from Watershed Wide Waste Discharge Requirements to TMDL standards.
- Find a legal regulatory way to incorporate long range mitigation plans into ongoing regulations.
- Maintain a healthy and viable oyster industry in Humboldt Bay. Humboldt Bay produces 70% of the oysters of the State.
- Revitalize the Humboldt Bay Shellfish Advisory Group. We lost a strong chairman and it needs to be reactivated.
- Get funding for detailed toxic source studies around Humboldt Bay. There is some reason to believe that old industrial sites may be leaking toxics into the Bay. This needs to be clarified.
- Increase the speed and for issuing and reissuing permits in the North Coast Region.
- Strengthen the working relationships with other state agencies. In particular the California Department of Fish and Game and the California Department of Forestry.
- SET DEADLINES and continue to clean up underground storage tanks in cooperation with DTSC.
- Maintain a strong enforcement program.

2. What help do you receive from the State Board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
 - a. The State Board holds an annual meeting with the Regional Boards to discuss important and emerging issues.
 - b. Regional board holds workshops to explore difficult issues 6-7 times a year.
 - c. Staff provides briefings as necessary.
2. Do you have any suggestion on how they might better assist you?
 - a. The SWRCB came to the Regional Board and personally went over hearing procedures. That proved very helpful.
 - b. Provide clearer direction to the Regional Boards. Over the past thirty years there has been an expansion of the appellate review role of the SWRCB. Staff involved in the appeals can't give direction. Like all appellate reviews issues are often decided upon narrowly. As a consequence, it is quite difficult for staff and Board members to use the technical and policy expertise of the SWRCB as effectively as was done in the past. Develop a legal, bureaucratic communication system that increases the direction to Regional Boards.
 - c. Great progress has been made with the SWRCB on introducing watershed wide regulatory concepts for non-point sources. More work remains to fully implement watershed wide regulatory concepts.

What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

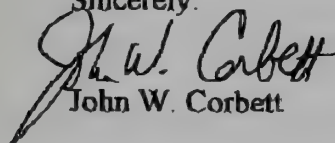
- a. Provided individual briefings on ethics and open meeting requirements by legal counsel on appointment.
 - b. Annual ethics recertification
 - c. Discussions with counsel on any specific issue that arises
3. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so how?
 - a. Appreciate our SWRCB liaison. I am being asked to comment and specifics will be given. In order not to be misconstrued I want to indicate that overall the SWRCB is doing a good job and it is greatly appreciated.
 - b. Coordination could be significantly improved
 - i. SWRCB members, and staff do not understand RB priorities and issues. SWRCB members and executive staff should take the time to visit and become familiar with regional issues. This should be a priority for their time.
 - ii. Precedential decisions by the SWRCB need to be clearly explained to the Regional boards. Right now that is left to each board and its staff to figure out how the order relates to our work.
 - iii. The SWRCB should do more water quality standard setting for health-based criteria such as freshwater beach pathogens. It is inefficient to require each RB to adopt the same health numbers.
4. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the Regional boards have long asserted that the board's grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
 - a. The review process for grants is too lengthy. In an attempt to develop consensus with a broad array of stakeholders, the selection process takes too long.
 - b. The internal review process needs to be improved. There is too much back and forth discussion on items between State Board staff and Regional Board staff. Either the Regions need better training, or the State Board should stop micro managing. Or both.
5. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

A strict compliance with all open meeting laws is the best way to involve the public.
6. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?
 - a. The staffing, lab support and contract funds for enforcement are too small; particularly to enforce against people who haven't filed for permits and are illegally discharging. Many of these in our region are related to timber and illegal developments in remote areas.
 - b. We are inadequately staffed to deal with fraud where the DA does not consider environmental crimes a priority.

- c. There needs to be a staff shift to watershed wide programs that take more time in the short run but in the long run will allow a large number of permits to be more efficiently handled.
- 7. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency? Accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g. point source versus nonpoint source pollution)?
 - a. Permits and clean up programs should rely on prevention and minimization. When pollutants must be discharged they should, to the extent practical, be numeric limits for point sources, and BMPs for most NPS. One problem we are encountering with this approach is that this system does not provide for long range mitigation or remediation problems. For example we focus a lot on BMP's for silvicultural activities on culvert and road maintenance. In some instances the road itself is poorly located alongside a stream bank. No matter how well maintained major portions can over the next twenty years be expected to slide into the creek. The solution would be a redesigned road system that over the next fifty years will contribute very little sediment. The system tends to treat such efforts as new preventable discharges as opposed to long range remediation efforts.
- 8. Please explain your views on whether storm water permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?
 - a. Region 1 does not have many storm water permits. Our programs are still developing and it would be premature to assign effluent limits to our permits. Many of our communities are below 10,000 in population. It is important to maintain some flexibility while we implement.
- 9. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?
 - a. We just established an enforcement unit. We anticipate that will improve accountability
 - b. There is a standing item on our agenda to discuss enforcement
- 10. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?
 - a. No, we cannot adequately monitor surface or groundwater quality. The board has directed staff to develop collaborative monitoring plans with other agencies and landowners as part of TMDL implementation programs. This is a great program but has as a downside a considerable delay of several years in TMDL implementation. Watershed wide healthy monitoring program takes several years worth of data to be statistically valid.

11. SB 72 (Kuehl, 2001) requires standardized storm water monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of storm water and storm water control measures. How is your board complying with SB72 to standardize storm water monitoring?
- The language requires the SWRCB to develop by January 2003 minimum storm water monitoring requirements for Phase 1 regulated municipalities. The SWRCB did not accomplish this goal
 - In RB 1 we have one Phase 1 municipal storm water permit. The permit, with three copermittees, is for the Santa Rosa area. The board renewed the permit in 2003 with monitoring requirements that are intended to be consistent with other municipal permits in the state and included special studies to focus on specific water quality issues within the Santa Rosa area.
12. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
- The RB just adopted the Salmon River TMDL last month; the board is on schedule to adopt Scott River in October and Shasta River in December. These dates represent our commitments to USEPA and are part of a consent decree.
 - Implementation of the 15 adopted TMDLs is severely constrained by lack of NPS staffing resources. To adequately implement the adopted Garcia TMDL costs one-person year. This staff person reviews erosion control plans submitted by landowners and works with them and other agencies to reduce sediment sources. We are not able to afford this same level of investment in any other basin.
13. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?
- The Board has adopted, and will consider the adoption of implementation plans that reduce sediment, temperature and nutrient loads through a combination of waiver, permit, basin plan prohibitions, outreach and education.
 - Yes, other agencies and landowners have a vital role. For example, in the Salmon River, the US Forest Service owns 98% of the watershed. Our implementation plan recognizes this and directs the development of an MOA with the Forest Service to supplement their timber waiver. The implementation plan goes on to say that if the MOA is not successfully completed in the near term, the staff is to prepare permits to regulate the Forest Service.

Sincerely:


John W. Corbett

CALIFORNIA LEGISLATURE

MEMBERS

JIM BATTIN
VICE-CHAIR

ROY ASHBURN

DEBRA BOWEN

GILBERT CEDILLO



GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 16, 2005

Eric Anderson
20245 Elfin Forest Road, RR #5
Escondido, CA 92029-4711

Dear Mr. Anderson:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, San Diego Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

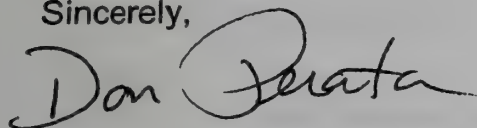
Sewage Spills

In its most recent 2003-2004 beach report card, the environmental organization, Heal the Bay, found that the County of San Diego led most counties in total number of sewage spills that triggered beach closures and the entire state in total volume of sewage spilled. At the board's May and June meetings the executive officer reported that from April 1 to April 30, 2005, there were twenty-one sanitary sewer overflows from publicly owned collection systems reported to the board office. Ten of these spills reached surface waters or storm drains; three of these resulted in closure of recreational waters. From May 1 to May 31, 2005, there were nine sanitary sewer overflows from publicly owned collection systems reported to the board office; three of these spills reached surface waters or storm drains.

16. Given the incidence of sewage spills and the number of beaches, especially in the southern part of the county, what steps are being taken to make sure public beaches in the San Diego region are safe?
17. Your region seems to have such a higher incidence of sewage spills than other parts of the state. Has your board examined this matter?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,

A handwritten signature in cursive script that reads "Don Perata". The signature is written in dark ink and is positioned above the printed name.

DON PERATA

DP:KW:dc

July 6, 2005

State Capitol
Senate Rules Committee, Room 420
Sacramento, CA 95814-4900

Via Fax (916) 445-0596

RE: Confirmation questions

Dear Chairman Don Perata, Vice Chair Jim Battin and the Senate Rules Committee:

Goals for my tenure on the Region 9 Regional Water Quality Control Board as the designated irrigated agriculture member.

1) As the irrigated agriculture seat I plan to continue to provide perspective from a farmer of Region 9. In the short term the Board continues to confront the challenges of continued impacts to the environment of urban runoff and how the construction is meeting the challenge of the new storm water permits. The municipalities of our region continue to implement our rigorous storm water permits and the board has held informational outreach and education to the community as deadlines of the permit implementation loom.

My top long-term goal is effectively tackling the challenges posed by the Total Maximum Daily Loads (TMDL's) and our regions 303d listed waterways. The difficulty of effectively controlling non-point source pollution that contributes bacteria, pesticides, fertilizers and trash can be overcome. The continued dialogue and education as the Board pursues a process necessary to meet the legislative and legal goals will require lots of hard work, imagination and constructive solutions. Education of the agriculture community and the continued collaboration with the Natural Resource Conservation Service for funding the farmers as they implement the Best Management Options provided by the University of California Extension Service has created the possibility of solutions that will preclude the need for continued litigation. Another personal long-term goal is to keep the focus on the continued need to develop the science necessary for the region 9 Board to regulate and improve water quality. The Board continues to confront difficult decisions that additional science and testing would help. Other major ongoing issues in our region that continue to require ongoing attention of the board are the underground tank leaks, sewer spills

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(including the border), and NPDES permit renewals for the military and industry adjacent to our oceans and bays.

I plan to look back on my service to the board and see dramatic improvements in water quality by the agriculture community and other rural non-point sources.

State/Regional Board Roles

2) Help

The State Board has been most helpful in providing legal support to our Regional Board during the meetings, and on special issues. Last month we had a difficult sediment clean up issue before us and Phil Wiles of the state provided additional legal support. There was also a letter clarifying our authority to the Regional Board on how we could proceed. The State Board member, Pete Silva has in the past also provided his insights on the issues. During my first term of two years, the staff of the Region 9 Board has done a very good job of providing the information necessary in order for me to be an effective member by attending, reviewing, understanding and confronting the need to clean up the water under our jurisdiction. Although the issues are scientifically complex most of the scientific issues are resolved before it arrives before the Board. The issues that come before us often require common sense judgment that the Porter Cologne Act allows in order to resolve what is equitable and possible at achieving clean water objectives while applying strong regulatory rules to many different types of individual situations.

- 3) The Region 9 Board continues to struggle with our role of offering our comments under the California Environmental Quality Act (CEQA) for numerous proposed projects. The potential solution of implementing tracking land use and water pollution issues with Geographical Informational Systems (GIS) is being pursued as resources allow. These resources need to be increased if possible. Also during the last few years the Board has faced difficult decisions that are in our Basin Plan and need to be reviewed in the Tri-annual Basin plan update process while funding has limited the review to a few issues. Finally the WQCC is a good forum to foster better interaction between the State and Board members, the more we can meet like this the better we can serve the citizens of California.
- 4) The Ethics training required by all office holders and the guidance provided by the State legal Counsel made it clear when conflicts of interest might occur. When the matter before us would directly benefit me. I have not recused myself.
- 5) Resolve the current scheduling conflict for State Board Member Pete Silva, with the current scheduling conflict his insights to our Board since my reappointment have been missed.
- 6) Grantee and contractee efficiency. These are done by Executive Officer and the State, it is not an area that as a Board member I review, so I cannot make a recommendation.
- 7) As a member of the Regional Board I do not review budget allocations but I would support more transparency and public review of the Region 9 operations. Especially since fees generated by the permits more and more are tied to the cost

of generating the permits.

- 8) No, the boards are not adequately funded to enforce the state and federal laws we are charged with enforcing. A common sense, incentive based approach to enforcing these laws would go a long way to achieving the goals of the laws without requiring the types of resources required to pursue enforcement using the current model utilized by our board. A good example is the amount of time the Regional Board has dealt with issues due to the outdated Basin plan. Under the Tri-annual review there were more than 50 issues that needed to be reviewed. In the end only a few issues were funded to be reviewed while the remaining outdated issues will continue to consume inordinate amounts of resources.

Water Quality Permitting

- 9) There is a big difference between regulating point sources and nonpoint sources. The Clean Water Act recognized this by making point sources the first target to achieve clean water. You cannot fix non-point discharges simply by setting numeric limitations. How do you stop copper and lead from being deposited on pavement from brakes? How do you prevent homeowners from applying too much fertilizer and pesticides to landscape areas? The setting of numeric limitations in these cases will not result in the non-source points achieving them. The use of Best Management (Practices) Options in many cases is rather new and will require extensive scientific work, public education and leadership by the State and Regional Boards on how best to deal with these non point sources to achieve the water quality goals of our State and Nation.
- 10) The EPA does not endorse numeric limitation

Enforcement of Water Quality Laws

- 11) The Region 9 in recent history has been rather vigorous in pursuit of enforcement of clean water laws. The City of San Diego has been fined millions of dollars and continues to receive fines for not preventing sewer spills. A developer in Temecula was fined almost half a million dollars for grading without a permit that resulted in sediment. The case is still under appeal. We have several fines of over 1 million dollars pending to be brought before the board. Instead the difficulty is that the Regional Board staff is overzealous in enforcement and permit requirements so that many clean water violations and permits that seem minor end up being debated before the board rather than approved routinely.

Water Quality Monitoring

- 12) While water quality monitoring has improved over the last few years, it still falls short of enough meaningful information especially as we begin to focus on non-point sources. One example of better monitoring is high levels of bacteria. This has lead to many beach closures in our region. However without scientific analysis of what type and source of bacteria, beaches are closed when there is no

threat to human safety due to human fecal coliform bacteria. The bacteria source instead is birds and animals. When this type of closure occurs it is counter-productive. The better scientific analysis of water quality is important and developing the scientific tools to do this in a cost effective yet precise method is imperative.

- 13) Our storm water permits will be back before us in 2006 and then would be the appropriate time to comment on how well our board is doing with implementation of SB 72.

Cleaning up Impaired Water

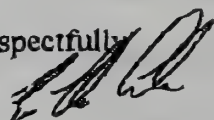
- 14) Our Regional Board is a recognized leader in fully implementing the municipal storm water permit programs. Our MS-4 permits are quite rigorous especially in the requirements for the municipalities and individual developers. Recently we have adopted several TMDL programs. Both programs are expensive regulatory programs that require extensive funding from all the regulated stakeholders. A "schedule" for taking such rigorous, expensive, regulatory programs is both counter productive and does not recognize the scientific, economic and political difficulty with resolving non point source pollution. The first TMDL adopted in San Diego is a good example of why a TMDL needs to have strong scientific basis (the 303 listing) and should be able to generate broad support from the stakeholders on how best to resolve the problem. The TMDL was for Diazinon, a pesticide that was banned a few months after we passed the TMDL. After spending so much time and effort the TMDL had really no effect on cleaning the Chollas Creek of Diazinon, but rather caused the stakeholders to spend significant scarce resources that could have been used to address other impairments in the same water way. Often as a TMDL comes before the board we see that stakeholders have made significant progress in cleaning up impaired waters. In the TMDLs that we reviewed it appears that the stakeholders are on the way to clean water goals without the TMDL. It is with good reason the Regional Boards are approaching TMDL programs with caution to be sure the scientific information is sufficient to support the TMDL and to be sure that the implementation will help achieve the clean up goals.
- 15) A problem with the TMDL's that have come before our board is that pollution loads sources have not been identified. The method has been to determine the impairment at a certain location and then allocate (primarily by barely scientific guesses) a load to the different sources that contribute to the water impairment. The correct way is to scientifically evaluate the source loads, assimilative capacity and the ability of the source to clean up the impairment. Right now our Region TMDL's proceed with best guess of what the sources are and arbitrary allocation of the load, while allowing additional time in an iterative process to develop the scientific information to understand where the actual impairment comes from and how to best clean it up.

Sewage Spills

- 16) a) The board has long been involved in an effort to clean up the raw sewage that flows from south of the border. Recently we have litigated the Federal government and their management of the International Boundary Water Commission Sewage treatment plant to achieve higher levels of treatment and clean up the water in the Tijuana River. b) Current efforts to improve the correct scientific identification will clarify if sewage spills indeed are the problem that triggered the beach closure. c) The Regional Board continues to pursue the City of San Diego and other jurisdiction that continue to under fund the water infrastructure budgets that result in sanitary sewer overflows. d) The Board is very transparent in reporting sewer spills. As board members we receive the monthly update of spills, a matrix of the severity, and a comparison with other regional sewer agencies.
- 17) While our own reporting of sewage spills seems to point to a higher incidence than other parts of the state I would be interested to know if this is indeed the reality. What I do know is that the number of spills over the time I have been on the board continues to go down. The transparency, the vigorous pursuit of the agencies responsible, and the support the Regional Board provides the local sewer agencies brings pressure to continue the reduction in sewer spills. It has been a focus of this board and its staff and I will continue to make it my personal priority to reduce the number of spills in the region.

Thank you for the opportunity to address the issues and I look forward to being of service to the citizens of California.

Respectfully,



Eric T. Anderson

La Costa Flower Shop and Nursery, Inc.,
20253 Elfin Forest Road
Escondido California 92029
Phone 760-471-1464
Fax 760-471-6529

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NETTIE SABELHAUS

APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

June 16, 2005

Alan Barrett
71 Viejas Grade Road
Alpine, CA 91901

Dear Mr. Barrett:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, San Diego Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
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know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
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The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

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accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

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11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

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12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
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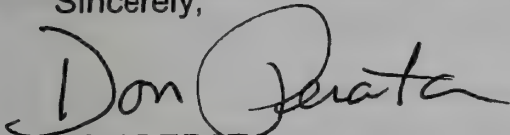
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Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,


DON PERATA

DP:KW:dc

VIEJAS

TRIBAL GOVERNMENT

P.O. Box 908
Alpine, CA 91903
#1 Viejas Grade Road
Alpine, CA 91901

Phone: 6194453810
Fax: 6194455337
viejas.com

VIA FACSIMILE (916) 445-0596

July 7, 2005

Ms. Nettie Sabelhaus
Senate Rules Committee Appointments Director
Room 240, State Capitol
Sacramento, CA 95814

Dear Ms. Sabelhaus:

This is in response to the letter received from Chairman Don Perata's office regarding my recent appointment to the San Diego Region Water Quality Control Board and the upcoming confirmation hearing. My written responses are listed below. Please note that I have not provided the original questions in the written responses, however, each numbered response coincides with each original question.

Statement of Goals

1. My goals are clearly aligned with the goals of the State and Regional Water Quality Control Board's and that is to preserve and enhance the quality of water resources in the San Diego region, and ensure their proper allocation and efficient use for the benefit of present and future generations.

State/Regional Board Roles

2. The San Diego Region Water Quality Control Board is committed to serving the public. Board Members and staff are highly qualified and capable, and full time legal counsel is provided. Supporting documents and information provided in preparation for Board Meetings, Public Workshops, and Hearings are in-depth and thorough. Also the San Diego Basin Water Quality Control Plan is comprehensive and continues to guide me through some of the scientific and regulatory issues.
3. The documents provided and the discussions during the Board Meetings and Public Workshops are sufficient in helping to better understand the issues at hand. Again, the Members and staff are extremely capable and resources are readily available.

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4. The Regional Board is provided full time legal counsel. This provides for his daily contact with the Office of Chief Council and for attendance at Regional Board meetings and for those occasions that require him to be in San Diego. Upon appointment, Counsel closely reviewed with Members how to proceed should a conflict of interest arise. While I have not had to recuse myself from voting, I clearly understand when to do so and again, counsel is on hand to advise.
5. The State Water Resources Control Board (SWRCB) has guiding authority over the Regional Water Control Boards and provides a comprehensive protection plan for California's waters. The Regional Water Control Boards serve as the frontline for state and federal water pollution control efforts, ensuring that state laws and regulations are enforced.
6. The Regional Board has a strong strategic plan in place identifying the dominant challenges our region faces and clear strategies for addressing the challenges. In the area of grants and projects management, for example, we work with stakeholders to encourage and facilitate the development of sound project proposals to protect, enhance, and restore water quality and beneficial uses. We have a strong tracking program in place to identify indicators and track the intended water quality and beneficial use benefits of grant and Supplemental Environmental Projects (SEP) funded projects.
7. The Regional Board encourages full participation of the public. This public process affords full access to activities and deliberations of the Board and access to all information possessed by the Board, the only exception is that which is limited by law. The Regional Board also strives to seek environmental justice whenever it is a consideration of the regulatory process.
8. The funding available to the Regional Board will determine our overall capability to respond to water quality issues in the region. Clearly resources are constrained which are challenging both the Regional Board, the municipality and other dischargers in their ability to meet Total Maximum Daily Loads and other regulatory requirements. Budget support for the Regional Board has shifted from General Fund to fees.

Water Quality Permitting

9. The Regional Board has and will continue to utilize the control and reduction of point source pollutants at the point of discharge. There is increasing effort to go beyond the proven methods of regulating point sources using effluent limits and receiving water quality pollutant standards. The Board has made huge strides enforcing Best Management Practices (BMPs) to the Maximum Extent Practical (MEP) and the public would not be well-served by changing the regulations and/or permit processes at this time. Regulating nonpoint source pollutant dischargers by reducing or eliminating them at their source is a growing challenge. This requires the identification and regulation of many responsible dischargers for this ubiquitous pollution. This effort will require extensive public participation and education.

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10. As noted above, the practices in place are effective and the momentum would be lost should new procedures be implemented at this time.

Enforcement of Water Quality Laws

11. The Regional Board's goal is to discover, report and respond to all violations. Oversight of sewage spills and follow-up enforcement action has continued to be the hallmark of our enforcement program. Establishing and adhering to appropriate policies and priorities for enforcement will be key to our continued success. Administrative civil liability complaints (ACLC) has proven to be an effective and efficient tool. Also the approval of Supplemental Environmental Projects (SEPs) by the Regional Board has been an integral part of enforcement. The Board will continue to prioritize enforcement actions with the most egregious and environmentally damaging violations made the highest priority.

Water Quality Monitoring

12. Continuous analysis of discharger monitoring reports has resulted in a very high rate of violations. Since the recent increase in reliance on fee payment by the SWRCB and all Regional Boards, a significant challenge exists to keep pace with enforcement actions that respond to non-payment of fees by all dischargers. The state-wide coordinated effort to impose administrative civil liability complaints (ACLC) on all dischargers who fail to pay permit fees has proven to be an effective and efficient tool. The goal is to continue to fund the enforcement coordinator position and compliance assurance unit to insure timely and effective enforcement.
13. SB 72 required the SWRCB to develop minimum monitoring requirements for stormwater discharges by January 2003. The bill has not been finalized and our current stormwater permits either meet or exceed the current draft guidance. The Regional Board will closely review and monitor ongoing procedures to ensure that we meet or exceed compliance once the bill is finalized.

Cleaning up Impaired Waters

14. The Regional Board has embraced the Total Maximum Daily Load (TMDL) effort as the highest over-all priority program. Some of the board's current strategies for enforcement and to remain on schedule include the use of legal authority to require more monitoring of receiving waters by dischargers to better define pollution conditions. Carefully review TMDL efforts statewide and refine internal processes to transition from TMDL development to the TMDL implementation to actually enforce the waste load reductions.
15. I have not identified any specific steps as this is a complex solution that should involve a broad range of stakeholders. It should not be any one source points responsibility, nor is it the general public's responsibility.

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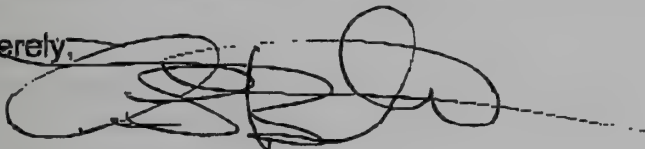
Sewage Spills

The following addresses questions 16 and 17:

The Regional Board is taking an aggressive compliance effort approach against operators of sewage conveyance systems. The most egregious and environmentally damaging violations are the highest priority with sewage spills number 1 on our list. Currently the region has reduced sewage spills by 50% and surpasses any other region in the State in sewage spill incidents. The Board closely examines all incidents and violators are prosecuted to the fullest extent possible.

In closing, I would like to say that while my knowledge of these water issues is not as extensive as my colleagues, I consider myself fortunate to have the opportunity to have a voice in the future of our water sources. I take my position very seriously and look forward to gaining a better understanding of the water issues the Region and State is faced with. Thank you.

Sincerely,



Alan L. Barrett
Regional Board Member
California Regional Water Quality Control Board
San Diego Region

CALIFORNIA LEGISLATURE

MEMBERS

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VICE-CHAIR

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 16, 2005

Daniel Johnson
1410 San Barbara Street
San Diego, CA 92107

Dear Mr. Johnson:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, San Diego Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

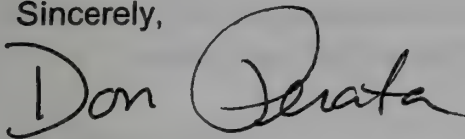
Sewage Spills

In its most recent 2003-2004 beach report card, the environmental organization, Heal the Bay, found that the County of San Diego led most counties in total number of sewage spills that triggered beach closures and the entire state in total volume of sewage spilled. At the board's May and June meetings the executive officer reported that from April 1 to April 30, 2005, there were twenty-one sanitary sewer overflows from publicly owned collection systems reported to the board office. Ten of these spills reached surface waters or storm drains; three of these resulted in closure of recreational waters. From May 1 to May 31, 2005, there were nine sanitary sewer overflows from publicly owned collection systems reported to the board office; three of these spills reached surface waters or storm drains.

16. Given the incidence of sewage spills and the number of beaches, especially in the southern part of the county, what steps are being taken to make sure public beaches in the San Diego region are safe?
17. Your region seems to have such a higher incidence of sewage spills than other parts of the state. Has your board examined this matter?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,

A handwritten signature in black ink that reads "Don Perata". The signature is fluid and cursive, with the first name "Don" and the last name "Perata" clearly distinguishable.

DON PERATA

DP:KW:dc

**Daniel E. Johnson
WQCB, San Diego Region
Responses**

RE: Response to Letter Dated June 16, 2005 - Request for Information Regarding Appointment to the Regional Water Control Board, San Diego

Dear Chairman Perata and Members:

Thank you for this opportunity to provide the information you requested in the above-referenced letter and let me express my regret for being unable to respond within the time frame requested due personal reasons (as previously delineated in an e-mail to you to you and your staff).

The following answers track the order and numbering in your letter and the questions are not repeated.

Statement of Goals

1) As a water quality appointment, with a strong water quality and technical background, I believe in the following:

- Ensuring that Regional Board staff, dischargers, and others are using "good science." This means the application of the most recent scientific methods and principles to decisions brought before the Board to ensure that water quality decisions are based on sound scientific methods.
- Advancing the cause of brownfields cleanups. I am interested in promoting the cleanup of brownfields and finding ways to bring brownfields into productive use. Promoting brownfields cleanups is often synonymous with smart growth principles; finding ways to encourage brownfields redevelopment and cleanup is consistent with the mission of the water boards.
- Finding ways to improve to the "process" of water quality regulation. Although my observations as a board member are

limited, I have to believe that the bureaucratic process by which regulations and policies are created can be improved.

- Improving the water quality of our region. While a number of significant steps have been made to improve water quality in the region over the last five years, more can and should be done to improve the quality of this precious resource.

State/Regional Board Roles

2). As is suggested by the preface to this question, the issues before us are scientifically complex and make for time consuming reading to get up to speed. Regional Board staff provide the most assistance with these complex issues by providing briefings at Regional Board hearings and workshops. State Board involvement with our Board is limited to legal counsel, which has included thus far training in conflict of interest issues, as well as routine legal support. For example, at a recent hearing, legal counsel representing both staff and the regional board (separately) were provided by the State Board.

3) I would like to see more training provided by Regional Board staff or perhaps outside parties, on issues that will clearly be significant and recurring over time. For example, at a recent Board meeting I suggested training or a presentation on the State and Regional Board's enforcement strategy and guidelines would be helpful to allow Board members to better understand the enforcement process. I have also suggested some training by outside technical experts to assist the Board and the staff better understand the complex scientific process and sampling and laboratory methods that are used to support the TMDL development process. And lastly, because TMDLs are taking such a high priority, I believe some State Board sponsored training on the TMDL development process being used and implemented across the state (lessons learned, what went well, what did not, strengths, etc.) would be helpful.

4) State board counsel provided a two hour training session on conflicts of interest, as well some reading materials on this topic. I have been in close contact with John Richards regarding a number of matters and have closely consulted with him when I believe I may have a conflict (e.g., a client or someone I know is appearing before

the board). I have, in fact, recuse myself on several occasions when clients or client matters that might pose a conflict went before the board.

State and Regional Board Structure

5) Your premise in the introductory remarks makes several presumptions which I call into question. You ask me to presuppose in a generalization that both industry and environmental groups agree with the premise that ALL regional boards are "cumbersome," lacking in "accountability, efficiency and transparency," with policy decisions decided on the back end. Aren't Cumbersome and lacking in efficiency really saying the same thing? Transparency and accountability are clearly related concepts. Is it possible that the very process which is attacked as inefficient and cumbersome is the public hearing and participation process which results in transparency and accountability? If these are indeed issues across the Boards, then a review of the process across all the boards should be done. It is unclear to me what I, as an individual board member, could do to address this concern if indeed it is properly leveled against the San Diego Regional Board.

To date we have interacted very little with the State Board. I do have enough information to have developed an opinion as to whether closer coordination or accountability between the Regional and State Board could be improved and if so to what benefit.

6) I am unable to comment on this. Of course increased efficiency is an ever-present organizational goal, but as to which areas, I am unable to offer an informed opinion. If I were to review this issues as a matter of organizational improvement, I would request that the major programs with the most person years and most water quality benefit be evaluated (e.g., given the extremely large investment in TMDL development, is there a better way to develop TMDLs?). I am unable to comment on the grant program mentioned in the question due to lack of contact with this program.

7) It is unclear to me from my limited observations that additional public scrutiny would benefit Regional Board operations. The question suggests budget allocations might benefit from increased

public scrutiny. I am unfamiliar with the budget process and how or whether this might improve operations. In general, it occurs to me, that Regional Boards are subject to consider public review by virtue of the board meeting process, much more so, for example, than the Department of Toxic Substances Control, who would simply issue an enforcement order.

8) No. From my reading of our staffing plan and projected needs, we significantly under funded. This forces a "triage" approach to enforcement and water quality protection.

9 and 10) We have heard nor considered any stormwater permits during my tenure. While I understand the dynamic presented regarding the use of BMPs and numeric standards, I have not yet developed an opinion on this issue and how such permits "should be constructed." I would offer, however, that if numeric standards are to be used that the methods for both sampling and analysis be carefully selected to produce technically defensible data.

11) Your introduction to this question "lumps" all Regional Boards together in a lack of aggressive enforcement of water quality laws, and including slow enforcement, and lack of criminal penalties. A case from the Central Valley Regional Board is cited as evidence of this. It is unclear to me, from my review of the staff's enforcement activities, if this criticism is properly leveled at the San Diego Regional Board. I have actually seen a number of significant enforcement actions, including significant fines, levied against violaters. We have a full time enforcement manger who provides us with information regarding enforcement activities in the EO report. I do have a suggestion, however, that training be offered to Regional Board members to allow us to better understand the enforcement process and what might be done to improve it, if indeed it is found to be lacking.

12) I am unaware of the AB 982 report, but would not be surprised by a recommendation that more water quality monitoring (in the SWAMP or otherwise) would yield a return on the investment. And while I am aware of the Regional Board sampling and monitoring for specific projects, such as a TMDL, I am unaware of the "baseline" monitoring done by the Regional Board or under contract. I am

aware that much of the monitoring done in the region is done by dischargers (such as the co-permittees under the municipal stormwater permit). While additional monitoring of surface and groundwater quality may indeed be beneficial, the question is whether such a program should be funded by the state and how would the priorities of such a monitoring program be established?

And I would again comment that if additional monitoring is indeed believed prudent, such monitoring **MUST** provide meaningful results, in accordance with appropriate sampling and analytical methods.

13) As a new board member, I am unaware of how this program is being implemented at this time.

14 and 15) If Regional Boards do indeed lag behind in developing TMDLs, what role does lack of funding and budget have in this? In addition, the public participation process for each TMDL, as well as the scientific analysis, seems extraordinary. If this process is impaired, like the water bodies it is intended to address, then surely additional resources and some form of standardization will be required to move it along.

16 and 17). I am unfamiliar with the data source the "Heal the Bay" report card uses and have not an opportunity to review it. I would comment that we do seem to have a number of sewage spills and beach closures, which is troubling. Are these caused by aging infrastructure and the inability of the cities to properly fund the capital improvement/infrastructure replacement programs? or perhaps are we more aggressive at monitoring and reporting sewage spills (resulting in the "higher incidence of sewage spills" reference in question 17). Or in the case of the southern part of the County, is it simply that the Tijuana sewage problem has spilled over the border into our region. Without having the opportunity to review the report and talk to the regional board staff, I am unable to agree with the premise of these questions. I do believe, however, that the issue is complex and will require a concerted effort to resolve. Which of these issues is the underlying cause will, of course, dictate an appropriate course of action. Perhaps a systematic evaluation of the causes of the spills would be warranted to better understand the data set.

Thank you for this opportunity to provide responses to your questions. Please feel free to contact me if you should have any questions or need clarifications regarding any of the responses.

Dan Johnson

Daniel E. Johnson

Vice President

Environmental Business Solutions

An SCS Engineers Company

8799 Balboa Avenue, Suite 290

San Diego, CA 92123

(858) 571-5500 Extension 234

www.ebsenvironmental.com

www.scsengineers.com



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CALIFORNIA LEGISLATURE

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GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 16, 2005

Jennifer Kraus Ph.D.
11502 Alborada Drive
San Diego, CA 92127

Dear Dr. Kraus:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, San Diego Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
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4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

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9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

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10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

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14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
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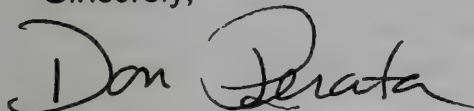
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17. Your region seems to have such a higher incidence of sewage spills than other parts of the state. Has your board examined this matter?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,

A handwritten signature in black ink that reads "Don Perata". The signature is fluid and cursive, with the first name "Don" and last name "Perata" clearly distinguishable.

DON PERATA

DP:KW:dc

Statement of Goals

1. My primary goal during my tenure as a member of the Board is to influence policy in such a way so as to protect the quality of surface and ground waters of the State of California. I hope to do this so that current and future communities within the Board's jurisdiction may benefit from the beneficial uses designated for these waters for many years to come.

State/Regional Board Roles

2. To date, I have relied primarily on Regional Board staff to better understand the issues addressed during Board meetings. Staff reports prepared prior to the meetings and their availability to answer questions clearly and concisely during the meetings have been most helpful.

3. At this point I do not have any suggestions for how I might better be assisted.

4. Mr. Craig Wilson of the State Board met with the new Board members and reviewed conflict of interest and ex-parte communications guidelines with us. We were provided with a copy of an April 17, 2001 memo from Mr. Wilson regarding Ex Parte Communications and the Standards of Ethical Conduct for Gubernatorial Appointees dated November 17, 2003. Mr. Wilson's prepared oral and written communications provided me with the guidance needed to determine whether or not I should recuse myself from voting on an issue. Where there has been an agenda item with the potential for a conflict of interest I have consulted counsel for guidance on whether to recuse myself or not. To date I have had to recuse myself twice since being appointed to the Board.

5. The State Board has overall responsibility for setting policy for water quality in the State of California. The Regional Board reports to the State Board and a State Board representative has been identified to serve as liaison between the State and Regional Boards. However, since becoming a member of the Board, the State Board representative has not been able to make any of the meetings. It would seem to me that it would be beneficial to have the State Board member present and available at these meetings to address the status of any pending policy issues that could be related to agenda items being discussed. The State Board member might also provide insight as to how other regional boards are managing related topics.

6. I believe the Regional Board would benefit tremendously by having someone on staff with an accounting and/or economics background. Regional Board staff should be able to perform a sound, credible and defensible financial evaluations of technical topics (e.g., financial impact on boat owners now required to utilize non-copper bearing antifouling coatings) component of many of the issues that we have been and will continue to deal with. The financial impacts of water quality policy have been brought up at every meeting to date and it will be crucial for the Board to not only perform

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JLKraus

July 7, 2005

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financial impacts analyses of water quality policy but to critically review such analyses as performed by interested parties.

7. Public scrutiny is an important part of the policy-making process. At this time I do not know of any areas of operation that would benefit from public scrutiny.

8. I believe the Board could utilize the following additional resources: financial analyst at the staff level, increased training for staff and Board members, and more adequate computer-based resources such as GIS software.

Water Quality Permitting

9. There should perhaps be a more comprehensive and technically sound evaluative component to assessing the effectiveness of BMPs. If they are not adequately protecting water quality, why is that? Are they implemented properly and consistently? Are the appropriate BMPs being implemented for each particular situation? What data exist to substantiate this claim? Numeric limits may not necessarily provide more consistency or accountability and would be difficult to apply to nonpoint source discharges.

10. I would need to consider available data and documentation objectively in order to provide an opinion with regard to whether stormwater permits should include numeric limits. At this time I do not feel that I can provide, or even that it be appropriate that I provide an opinion.

Enforcement of Water Quality Laws

11. I believe our Board has a solid record with respect to the manner in which it enforces water quality laws. I do not have any concerns with this Board's performance in this area.

12. I don't know whether current funding levels are adequate at this time. I would need some time to investigate the current resources our Board has to monitor water quality.

13. It is my understanding that our Board is complying with SB 72 requirements for stormwater monitoring standardization. Again, I would need some time to investigate the current resources our Board has and utilizes to comply with SB 72.

Cleaning up Impaired Waters

14. I believe our Board is successful at identifying impaired waters and that we are making progress towards developing pollution loads with the ultimate goal of cleanup.

15. Again, because I believe our Board is making progress in the area of pollution load identification. Other agencies should play a role in implementing these loads. The specific roles will perhaps vary on a case-by-case basis. Interagency agreements and

MOU's may perhaps assist in ensuring these agencies meet their responsibilities with regard to load implementation support.

Sewage Spills

16. The Board adopted Order No. 96-04 , waste discharge requirements prohibiting sanitary sewer overflows by sewage collection agencies. This order regulates 48 cities and special districts in the region that own and operate sewage collection systems. The Board also has several enforcement actions it may utilize to prevent sewage spills: NOVs, CAOs, Cease and Desist Orders, etc.

17. The Board is kept up-to-date on sewage spills via the Executive Officers Report. This monthly report identifies recent sewage spills and provides summary data concerning past spills. This report is based upon raw data submitted by sewage collection agencies that is maintained in a database managed by Board staff. Annual summaries of these data are also prepared by staff.

Susan Ritschel's response to questionnaire re: Senate Confirmation of appointment to the San Diego Regional Water Quality Control Board.

1. Statement of Goals.

During my tenure as a member of the Regional Board, it is my goal to assist in the effort to improve water quality within the San Diego region.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?

While the issues before us are quite complex, the Executive Officer (EO), Regional Board staff, and Chairman Minan have all been available to respond to technical questions both prior to and during the formal hearings.

3. Do you have any suggestions on how they might better assist you?

It would be helpful to meet in a more informal basis periodically with staff and the EO to review issues, policy, etc. between the monthly board meetings. Additionally, I understand there are periodic roundtable discussions scheduled for board members of all the regional boards statewide, however, since being appointed last December, such a meeting/workshop has not yet been scheduled. It would also be helpful to have more frequent updates provided by the State Board in terms of major policy issues and efforts underway.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

New board members received a comprehensive briefing by State Board attorney Craig Wilson in February that covered topics including the role of board members and staff, the relationship between the EPA, State Board and the Regional Boards, the various laws applicable to Regional Board decisions (the Porter-Cologne Act, the Federal Clean Water Act, etc.), and conflict of interest regulations.

Although I have not yet been required to recuse myself due to a conflict of interest, I have been in contact with Mr. Wilson on one occasion to determine whether a possible conflict existed; in that instance, he concluded that in fact I did not have a conflict, and I was able to participate in the hearing.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?

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As a new board member, I have had very little interaction with the State Board. I do believe it would be beneficial both in terms of educating new board members as well as improved coordination of goals and objectives if there were more interaction between the State Board and Regional Board members.

6. *Are there specific areas of operation that you think would benefit from increased efficiency? Do you have any recommendations for improving efficiency in these or other operations at the regional boards?*

I do believe that all areas of operation will be improved with the introduction of electronic permitting and the digitization of records given the document-intensive nature of the Regional Board function. While I certainly support efficiency efforts, I would not want to see public involvement (i.e. adequate number of public hearings on significant issues such as TMDLs) jeopardized in any way due to an overzealous effort to be increasingly efficient.

7. *Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?*

Transparency in government is extremely important, and I support measures that will increase public access to information. In my capacity as a local government official (Councilmember, San Clemente), I have worked diligently to improve such access for the citizens I represent locally, and will work to do the same during my tenure on the Regional Board. I support the new CIWQS (California Integrated Water Quality System) system that has just recently been implemented, which will manage permits, track enforcement activities, and also compile water quality data and make all of this information much more accessible to both board staff and the public. Region 9 has also secured funding for the purchase of a document imaging system that will scan and digitize the vast amount of historical documentation currently on file as well as future data, and will make this information increasingly available for use by the board staff, board members and the public.

8. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?*

No. At the present time, Region 9 is funded at a minimal operational level, with the current resources limiting our ability to fully enforce, investigate and review monitoring reports. Given this situation, it is important to note that Region 9 is a donor region, contributing more in terms of fee resources than it receives in funding from the State.

9. *Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency, accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution?*

One of the crucial roles of the Regional Boards is to regulate the discharge of waste, and it is important that we look at the source, the waste stream, and the receiving waters. Point source dischargers are, by their nature, more easily regulated by imposing numeric limits, while non-point source dischargers pose a more difficult challenge. As I've noted in response to the following question, I will be very interested in the results of the study being conducted by the State Board concerning numeric limits for stormwater, and would certainly consider numeric limits on these and other non-point source dischargers if the data supports that this approach is more effective in returning our impaired water bodies to their previous state appropriate to support beneficial uses.

- 10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?*

I believe that the goal of placing numeric limits on stormwater permits is valid, and I understand that the State Board is initiating a scientific study to assess the feasibility of numeric limits for stormwater. The results of this study will be extremely useful in evaluating the potential use of numeric limits versus BMPs on stormwater permits. Before applying or enacting a new policy such as numeric limits on stormwater, I believe that it is crucial to have a solid basis for doing so, including scientific data to prove that a policy such as this can indeed provide the expected result, that it can be readily implemented, and that the results can be tracked via monitoring.

- 11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

During the six months I have served on the Regional Board, the Board has been very aggressive in terms of issuing Enforcement Actions, Notices of Violation, and tracking ACLs (Administrative Civil Liability Complaints), each of which is reported on a monthly basis by the Executive Officer to the Board members. Additionally, the Regional Board has adopted multiple TMDLs during the last several months (Rainbow Creek – nitrogen and phosphorus; Chollas Creek – metals; Shelter Island Yacht Basin – copper) in keeping with the requirements of the Federal Clean Water Act. The continuation of these efforts will be critical to ensure progress toward the goal of restoring beneficial uses to impaired water bodies.

- 12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?*

Effective water quality monitoring is critical in evaluating current water quality and the health, safety and welfare of the public, as well as the progress of clean-up efforts and compliance with discharge permitting requirements. While current funding levels do provide for some level of monitoring, the bulk of the burden rests with the applicants to

comply with increasingly aggressive monitoring requirements. The Region 9 Board has been requiring more stringent monitoring efforts in recently approved NPDES permits for this reason.

13. How is your board complying with SB 72 to standardize stormwater monitoring?

The CIWQS (California Integrated Water Quality System) system is up and running as of June 30, and Region 9 is actually leading the way among the remaining regions in electronic permitting and self-monitoring reports. As noted in response to a previous question, the region is also in the process of transferring to a digital records management system that will improve efficiency and access to monitoring and other records on file with the Regional Board office.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

Again, during my short tenure thus far on the Regional Board, we have adopted multiple TMDLs, many of which have been in progress for the last several years, and we have many more on the schedule for adoption during the next several years. While there are additional water bodies within the region listed as impaired and on the 303(d) list, most of these are scheduled for TMDL adoption/implementation at some point. Due to the complexity of creating a TMDL and the associated Regional Board staff time required to carry it through to the point of adoption by the Board, budget and staffing constraints are likely the primary reason for the delay thus far.

15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

Certainly, one means of implementing identified pollution loads is through the issuance of TMDLs, which establish specific goals and an implementation plan to reach those goals in an impaired water body by a date certain. The question of whether other agencies have a role in implementing these loads really depend on the pollutant load one is trying to reduce, but in many cases, the local agency holding the MS4 permit (the stormwater NPDES permit) will likely be involved and be responsible through its permit requirements to meet the water quality objectives. It is through the water quality monitoring requirements placed on the permittee that compliance will be ensured.

16. Given the incidence of sewage spills and the number of beaches, especially in the southern part of the county, what steps are being taken to make sure public beaches in the San Diego region are safe?

Over the years, we have learned much about the causes of poor water quality and the impacts that pollution has on both the health and safety of the public, as well as the economic health of the region. Continuous beach closures, as experienced a few years

ago in the City of Huntington Beach, do as much harm to tourism as they do to the environment and to the swimming, surfing and fishing public. Fortunately, both point source and non-point source dischargers are taking these impacts seriously. More stringent waste discharge requirements through permit issuance is one reason, consistent and aggressive enforcement is another, and education and the level of awareness of the public at large is yet another. I am confident that the continuation of the work underway by the Regional Board will result in improved water quality in the San Diego region.

17. Your region seems to have such a higher incidence of sewage spills than other parts of the state. Has your board examined this matter?

Yes. Indeed, the region has experienced a large number of sewage spills, and this has and continues to be a great concern of the Board. While such occurrences may not have been addressed as aggressively as they should or could have in the past, my observation is that Regional Board staff action has been quick, aggressive, and increasingly effective in reducing both the number of spills as well as the response time required to address the cause of the spill and the clean-up. These major sewer spills (such as those that have occurred in the City of San Diego) have been taken very seriously and significant ACL (Administrative Civil Liability) Complaints issued as a result. Other municipalities will hopefully react to this type of action by more diligently monitoring and investing in their own sewer systems, something that I have certainly advocated in my own city.

John H. Muller • P O Box 218 • Half Moon Bay • CA 94019 • Res. 650.726.2886
E-mail: farmerjohnmuller@aol.com

July 8, 2005

Ms. Nettie Sabelhaus
Senate Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

**Subject: Responses to Senate Rules Committee Questions as Part Of
Confirmation Process For Regional Water Quality Control Board Appointment**

Dear Ms. Sabelhaus:

The following written answers are in response to Senator Perata's letter to me dated June 16, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

Both as a Regional Board member, and presently as Chair I do all I can to ensure our new board members are welcomed aboard, then quickly and thoroughly briefed and brought up to speed on the many issues currently facing our Regional Board. Additionally, I make sure they are given background information of past issues affecting us as well.

After over eight years of working on the Mercury TMDL, I want to get the final approval for implementation complete. This is an important issue many past and present Boards have worked hard to achieve. This is a top priority facing our Board.

I want to continue to work with our Executive Officer for him to be able to achieve continued accomplishments while working with limited resources, both fiscal and employee related (fewer staff people to perform greater tasks).

State/Regional Board Roles

The issues addressed by the Regional Water Boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?

The State Board has recently initiated a monthly Chairs' conference call for updates and information. This is a big step forward which will even better support informed data facilitating for the decision making process. State Board members and staff are also available to answer our questions and concerns when needed. An open door policy helps with clarification on all-important issues.

A big advantage in having a fully seated Regional Board is that there is a healthy, diverse membership from such different backgrounds. This leads to more shared expertise and open information made available allowing even better decision making abilities possible.

From staff, Board members receive excellent staff reports, staff summary reports and presentations that explain and analyze the complex issues in understandable terms. Staff also provides Board members less formal monthly report items that keep both Board members and the public abreast of issues and cases as they evolve. Additionally, Board members have easy access to the Executive Officer of the Board for answers to questions.

3. Do you have any suggestions on how they might better assist you?

We are achieving better assistance from Regional Board staff in the following ways: 1. As Chair I have initiated closer communication with our Executive Officer by having a phone conversation every Monday for a past and upcoming activity update. This has helped tremendously. We have the staff keep all members informed on current and future issues by e-mail; 2. As Chair I am working better at expressing my information to staff; 3. I have encouraged the Board to let staff know what they need from staff and for staff to let the Board know what they in turn need from them.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your boards' agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

We in Region 2 are very fortunate to have full time legal staff with Dorothy Dickey and Yuri Won. They continually update us on our roles and responsibilities as Board members. We all comply with State Ethics laws. Additionally we view an all-inclusive Ethics Video and receive written materials.

Because of my years of experience and aforementioned training, I have had no question thus far with conflict of interest. Should I ever have the slightest doubts I would not hesitate to ask for clarification from staff.

Both industry and environmental groups have criticized the State and Regional Board structure in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the State Board and your Regional Board? Could coordination and/or accountability be improved? If so, how?

Our relationship on a day-to-day basis with the State Board and its staff is good.

Both organizations do their best to share their expertise and experiences.

The State Board has attempted to proactively identify issues for statewide policy making by polling Regional Board managers. However, State Board has limited staff to work on policy issues, while many important issues evolve at the Regional level as they come up in a specific region and before they have become statewide issues.

Unfortunately, the recent trend by the State Board to take resources from Regional Boards for statewide efforts such as permitting and enforcement is counterproductive. Though managed at the state level, these statewide efforts still draw upon the expertise of the regions, unfortunately now with reduced resources to respond. Instead of taking resources away from the regions, the State Board should consider staffing its programs with temporary assignments of staff from the regions as a means to spread regional expertise statewide. This also has the advantage of exchanging knowledge and building better relationships between the State and Regional Boards. In much the same way, State Board staff could benefit from temporary assignments at the regions, especially in evolving areas such as stormwater and TMDL development.

6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations the regional boards?

The regional board's record keeping system could be made more efficient. Given the lack of resources to upgrade the board's record keeping system, staff spend many unnecessary hours searching for records both for the Board's and the public's use. The State should invest necessary resources to convert the entirety of the Board's historical records into a searchable electronic form, which would have long-term payback in saving both the staff's and the public's time.

In terms of the grant process, our staff recommended that the State Board start following the "grant agreement" approach other agencies employ, as a means to streamline the grant process. Since the State Board has done so, the grant process has significantly improved. The process could be further helped through the formation and use of a statewide "roundtable" of grant coordinators from each of the regions. This would be an efficient way to ensure both local concerns and lessons-learned are addressed in a consistent, statewide fashion.

Also, as described under Question 5, more proactive, statewide policy development at the State Board would help all regions. Too often, each region now finds itself "reinventing the wheel" on issues that other regions have already addressed.

7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

The public's access to information could be improved in many areas, such as access to discharge data, discharger studies, and all reports. While the public has generally not had much interest in budget allocations, this and all information about board

operations should be easily accessible to the public. Ideally, public access and scrutiny should be accomplished by making the information available through the investment of building searchable and user-friendly websites, so that the public may do its own research, and reduce its reliance on time-consuming Public Record Act requests.

8. Do you believe your Regional Board is adequately funded to enforce the state and federal laws you are charged with enforcing?

No, the Regional Board is not adequately funded for enforcement. There were less than two positions allocated to our region for enforcement last year, and State Board has reduced this to one-and-a-half positions this year. Most of this Board's enforcement has been and will continue to be supported by using funds from other water quality programs. Unfortunately, this negatively impacts the performance of those programs.

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency, accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus non point source pollution)?

All permits should be constructed to have prescriptive, enforceable requirements that can be readily monitored or measured for compliance. The requirements must either protect existing beneficial uses or contribute to the restoration of beneficial uses when waters are impaired. The nature of these requirements depends on the

source of the pollution: where pollution sources are continuous and predictable, such as for point sources like municipal or industrial wastewater, numeric limits are appropriate and should be used. Where the nature of the pollution is less predictable, less constant, and thus is difficult to efficiently treat, such as for stormwater and other non-point sources, numeric limits are unlikely to be efficient in protecting or restoring beneficial uses. In these cases, it is more efficient to require measures that resolve in the reduction of pollutant loads in waters, such as pollution prevention, source control, improved site design, and measures that moderate runoff or the flow of pollutants.

Our staff is working on this issue now as it prepares a regionwide stormwater permit for municipal sources. We expect that any numbers in stormwater permits, even if they are not effluent limits, will be controversial due to the potential costs and difficulties in achieving them.

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

As discussed in Question 9, stormwater flow and quality varies so much that effluent limits are not feasible in nearly all cases. On the other hand, all permits need enforceable performance measures, even if they are not expressed as effluent limits. Where flow and quality of runoff is better defined, such as from an industrial site, as compared to a whole city or watershed, it may be appropriate to establish benchmark levels of accessible pollutant runoff, such as is now being considered in its update of the statewide permit for industrial stormwater runoff.

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its Regional Board.

11. Are there specific ways in which your Regional Board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

While the Region's enforcement funding has been cut, Board management has taken steps to improve enforcement practices. Five years ago, management established a cross-divisional enforcement committee to act as a forum to identify and prioritize enforcement cases, and to resolve legal and procedural issues in carrying out that enforcement. Soon after, management established a unit dedicated to enforcement with staff specially trained in enforcement. That unit has focused mainly on assessing mandatory minimum penalties, though it also prepared numerous administrative civil liability complaints for sewage overflows, spills and other illicit discharges. This year, in response to the State Board's Enforcement Plan, management is establishing enforcement action goals, and a more formal process for prioritizing enforcement cases.

Monitoring staff's practices on enforcement is difficult, since the Board will commonly need to act on an enforcement case. However, a Board member can request that the Executive Officer generate a regular (e.g., semi-annually) confidential list of violators, indicating which ones are prioritized for enforcement, and in what time frame, given available resources and other program priorities.

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spend more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your Board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

We cannot adequately monitor our waters with existing Surface Water Ambient Monitoring Program (SWAMP) funds (one staff person and \$310,000). However, we have taken action to get optimum benefit from and to supplement SWAMP. Specifically, in the early '90s, we created the San Francisco Estuary Regional Monitoring Program (RMP) and require all permitted dischargers to contribute funds to support it. The RMP, which is administered by the San Francisco Estuary Institute, has an annual budget of \$3 million that provides comprehensive monitoring of water, sediment, and fish throughout the Bay.

We use our SWAMP resources to monitor all other waters in the Region (rivers, creeks, lakes, and reservoirs). Given the low level of SWAMP funding, this is a bare-bones effort wherein we conduct pollutant and biological sampling on a rotating watershed basis, following a fifteen-year schedule to monitor all waters. With funding for only one staff person, we have strived to supplement our effort by coordinating with monitoring done by dischargers and other agencies. We have also been able to sustain a team of talented students with some of our contract resources, who conduct the bulk of the actual sampling work.

13. SB 72 (Keuhl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Our staff has reviewed and commented on the State Board's draft Statewide Policy for Monitoring that is being developed to comply with SB 72, finding that the draft Policy may overly limit monitoring necessary to determine the impacts urban runoff has on the health of receiving waters. However, even without this statewide policy in place, our region has been focusing on means to better track the impacts of stormwater runoff and the progress we've made through its control to date. For instance, Bay Area municipal stormwater dischargers and Caltrans are required to contribute to the aforementioned Regional Monitoring Program that includes evaluation of stormwater pollutant loading to the whole Bay system. We are also working on a regionwide stormwater permit that will apply to municipalities throughout the Region, which by design will include standardized stormwater monitoring and reporting requirements.

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, Regional Water Boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your Regional Board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

By the end of this fiscal year, our Board will have taken action on TMDLs for one-third of the 270 impaired water quality listings in our Region. In addition, nine additional projects are scheduled for completion by 2008 that address over 50 listings. We have made it clear to our staff that TMDLs are a high priority, but we have also made it clear that the TMDLs must be implementable and result in real water quality improvements.

We expect future TMDLs to build upon our current efforts and expect to realize efficiencies from applying approaches to upcoming TMDLs that reflect lessons learned. We have also encouraged ongoing collaboration with dischargers and the environmental community as we develop TMDLs, and we have embraced the Clean Estuary Partnership wherein Bay Area municipal stormwater and municipal and industrial wastewater dischargers are providing over \$1,000,000 annually to assist in developing TMDLs. The bottom line is that most of our TMDLs, particularly those for San Francisco Bay, are exceedingly complex and require considerable data collection and analysis efforts.

As for identifying other waters that may be impaired, we are fortunate to have the Regional Monitoring Program that includes Bay-wide monitoring of emerging pollutants of concern such as PBDE flame-retardants. However, as noted under

Question 12, we realize our existing SWAMP resources are not sufficient to monitor our other waters in a timely manner.

15. What steps would you take to implement identified pollutions loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

As noted above, all of our TMDLs include implementation plans. As part of the development of TMDLs, our staff identifies responsible parties and evaluates implementation options. To the fullest extent possible, we seek commitment and accountability from dischargers and responsible parties, including other public agencies. For example, our staff is working with the State Department of Pesticide Regulations on the development of a TMDL for pesticide toxicity in our urban creeks. We expect to use our Federal Clean Water Act and State Water Code authorities to implement TMDLs via NPDES permits, Waste Discharge Requirements, and/or conditional waivers of Waste Discharge Requirements. We are also counting on our staff to optimize use of grant resources to implement TMDLs.

Mercury

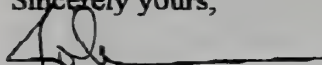
The board has developed a Total Maximum Daily (TMDL) Load for mercury, which is now before the state board for action.

16. How will your board interact with the Central Valley Regional Water Quality Control Board, since some of the sources of mercury pollution lie in their region?

Our San Francisco Bay mercury TMDL includes an explicit load allocation to the mercury coming from through the Delta and the Central Valley. It is founded on a collaborative effort between our staff and the Central Valley board staff to reflect ongoing efforts to establish TMDLs for mercury in the Delta, the Sacramento River, and its tributaries. Our staff is committed to continue its collaboration with the Central Valley board staff. The adaptive implementation component of our TMDL requires our staff to review the TMDL and advise us on implementation progress no less than once every five years. We also expect the State Board and its staff to work with us on these collaborative efforts, and if necessary, point out any need for revised or additional actions by the regional water boards.

In conclusion, I would like to thank you for the opportunity to answer these questions. I look forward to being able to continue to work for the betterment of our state and environment. I appreciate the ability to further be a caretaker of the earth.

Sincerely yours,



John H. Muller

PO Box 218

Half Moon Bay, CA 94019

Res. 650 726 2886 Cell: 650 464-8226

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DON PERATA
CHAIRMAN

June 16, 2005

John Withers
21 Cedar Ridge
Irvine, CA 92612

Dear Mr. Withers:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, Santa Ana Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex.

~~Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.~~

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

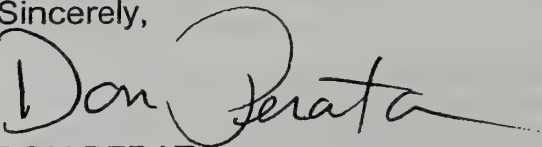
Groundwater

Groundwater contamination has been one of the top priorities of the Santa Ana Regional Water Quality Control Board for some time. Among the major challenges faced by the board are reducing salts and nutrients in manure and wash water from dairy operations overlying the Chino Groundwater Basin that have severely degraded groundwater quality and threaten downstream water quality. There is also a need to control contaminated groundwater that underlies many areas of the region resulting from historic discharges of chlorinated solvents.

16. Please describe the types of groundwater contamination your board is addressing?
- ♦ Specifically, how is perchlorate contamination being addressed?
 - ♦ How are dairy wastes being addressed?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,


DON PERATA

7/8/05

Via Fax 916-445-0596

Ms. Nettie Sablehaus
Senate Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

SUBJECT: John B. Withers *JBW*
Response to Questions
Reappointment to Santa Ana Regional Water Quality Control Board

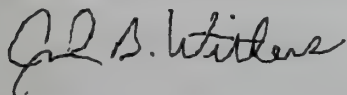
Dear Ms. Sablehaus:

Attached are responses to questions posed by the Senate Rules Committee. I appreciate the opportunity to share my thoughts on these insightful questions with staff and members of the Committee.

I also appreciate Governor Schwarzenegger's continued confidence in my ability to serve the Santa Ana Region. I can think of no more important service than to protect water quality for future generations of Californians.

If I can provide you or the Committee with any additional information, do not hesitate to contact me.

Sincerely,



John B. Withers
Member, Santa Ana Regional Board

Santa Ana Region

John Bradley Withers
Candidate for Re-Appointment
Santa Ana Regional Water Quality Control Board
Senate Rules Committee Questions

Statement of Goals

1. My goal, simply stated, is to continue to use good science to approach regulatory responsibilities in a practical manner. Additionally, I wish to employ the thirteen years of service (under three governor's), as institutional memory for the organization in developing meaningful, balanced and innovative regulations.

State/Regional Board Roles

2. The State Board provides statewide scientific support on public health and water quality matters. Our Board members provide their experiences with water quality matters to help evaluate issues coming before the Regional Board staff provides detailed, scientific, engineering and regulatory support.
3. We are clearly understaffed to address the wide range of responsibilities we are charged with. More resources are needed.
4. Regional Board members are required to take ethics training every two years online which I have successfully completed several times. I have recused myself on several issues related to the retail water district board I serve on. Even though I could legally participate in several of the votes, in an abundance of caution, I chose not to. I am known by all to be a very fair person.

State/Regional Board Structure

5. I view the State and Regional Board relationship as very good. We closely coordinate our efforts and, as evidence, have almost no petitions filed to the State Board.
6. Recent legislation has required increased public participation and more steps to the process. Additional staff doing grants administration would also speed things along.
7. Generally speaking, our process at the Regional Board is open and transparent. Our objective is to engage stakeholders at every step possible; early and regular consultation with our stakeholders.
8. The Regional Board is severely under funded to carry out our mandates. The legislative analyst found us 50% under funded in the past. We've been cut 15-20% since then. We will push to be more efficient, creative and generate local funding sources where possible.

Water Quality Permitting

- 9/10. My view is numeric limits for storm water permits are generally unworkable. We need to support continued implementation of constantly more effective BMP's. For point source discharges there are also important differences as treatment options vary greatly.

Enforcement of Water Quality Laws

11. Additional staffing is the key way our Regional Board could improve enforcement. All enforcement activity is prioritized and monitored by a Regional Board oversight group. We work on the highest enforcement efforts first. Enforcement cases are brought to our Regional Board routinely on a regular basis.

Water Quality Monitoring

12. There are not nearly enough resources to do this ourselves so we have engaged all stakeholders to assist us in this effort. Storm water is monitored annually and all groundwater every three years. This is not done anywhere else in the nation to our knowledge.
13. Our Regional Board is implementing the State Board directed program on SB 72. But as discussed above in question 12, our Regional Board is going well beyond with our stakeholder partnered effort.

Cleaning Up Impaired Waters

14. TMDL's are being pursued as quickly as our resources allow, in conjunction with administration of sound science and necessary stakeholder and public participation.
15. Implementation plans are required by law for incorporation into Basin Plans. These implementation plans include participation by other agencies as appropriate. Enforcement will be through the permitting process, either through NPDES permits, or through the MS4 storm water permit program.

Groundwater

- 16A. Perchlorate Contamination is our top priority. Maximum effort by staff, along with the California Attorney General is being expended. Multiple enforcement orders are being enforced. Hundreds of samples are being taken, dozens of investigation wells have been drilled, water replacement orders have been issued and we've provided funding for wellhead treatment. The largest litigation effort ever initiated by this Regional Board has been filed against Black and Decker and their subsidiaries.
- 16B. Dairy Wastes are being addressed through integrated water supply and quality strategies including construction of desalters for treating historic and legacy dairy contamination. Also, every dairy is required to prepare and implement engineered waste management plans to address dairy waste management. Our Regional Board leads the state and nation in this regard and we are proud of our progress to date.

522-R

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STATE OF CALIFORNIA



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WEDNESDAY, SEPTEMBER 7, 2005
1:41 P.M.

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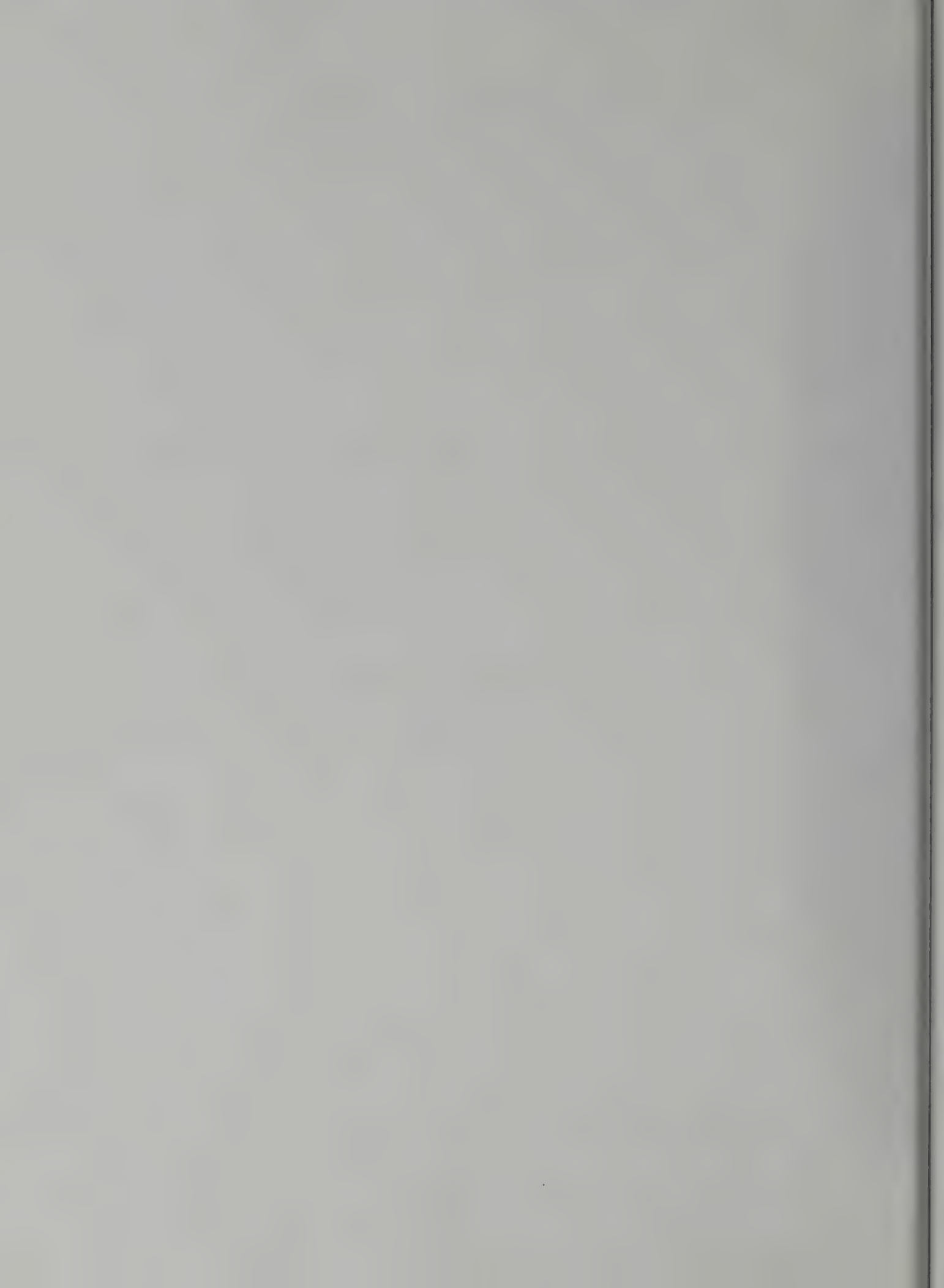
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15 WEDNESDAY, SEPTEMBER 7, 2005

16 1:41 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

JOAN BORUCKI, Director
Department of Motor Vehicles

ARTHUR L. ANDERSON, Assistant Commissioner
California Highway Patrol

RANDY PERRY
California Association of Highway Patrolmen

PETER WELCH
California Motor Car Dealers Association

JIM CONRAN
Consumers First
California Small Business Association
California Small Business Roundtable

1 ROSEMARY SHAHAN, President
Consumers for Auto Reliability and Safety

2 IGNACIO HERNANDEZ
3 Consumer Federation of California

4 ROBERT PACHECO, Member
5 Occupational Safety and Health Appeals Board

6 JOSEPH M. MILLER, Member
7 Workers' Compensation Appeals Board

8 BONNY L. HERMAN, Member
9 California Regional Water Quality Control Board
Los Angeles Region

10 RICHARD LEHMAN
11 City of Downey

12 SENATOR RICHARD ALARCON

13 CRAIG JOHNS
14 California Resource Strategies
Calleguas Creek Watershed Association

15 CHRISTINA DILLON
16 California Association of Sanitation Agencies
Los Angeles County Sanitation Districts

17 KATHLEEN COLE
18 Metropolitan Water District of Southern California

19 LESLIE MINTZ
20 Heal the Bay
Santa Monica Baykeeper

21 VICTORIA ROME
22 Natural Resources Defense Council

23

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Written Responses to Committee Questions

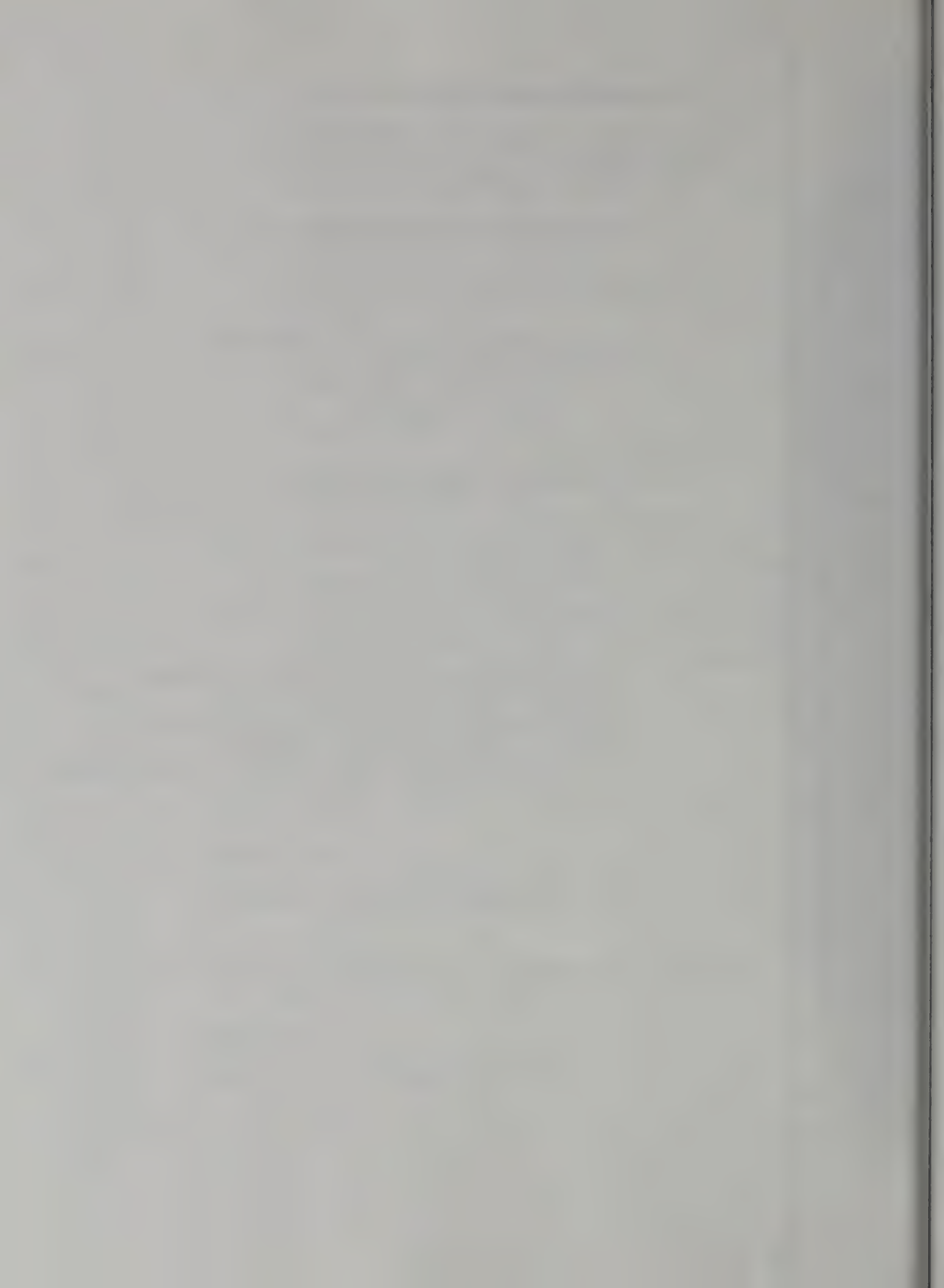
By Appointees, as well as Written

Statements by Appointees Not Required to

Appear: HAMID D. NAHAI, Member

California Regional Water Quality Control Board

Los Angeles Region



P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Senate Rules Committee is now in session.

We will we move now to Item Two, the Governor's appointees appearing today. First is Joan Borucki, the Director of Motor Vehicles, also known as DMV.

Welcome.

MS. BORUCKI: Thank you. Good afternoon, Senators.

Thank you for taking the time to consider my nomination to the Director of the Department of Motor Vehicles today.

As the Senator mentioned, my name is Joan Borucki. I have 25 years of service in state government, beginning at the Department of Transportation, finally ending up here at the Department of Motor Vehicles.

I've had an opportunity to work with a great many of the -- of qualified and noted individuals in state service. I can honestly say that I have been thoroughly impressed over the last nine months with the quality of the people that I've had the opportunity to work with at the Department of Motor Vehicles, and I'd like to recognize them for that. They are highly qualified individuals and have high motivation, are customer service oriented, and have worked very hard with me on the various goals that I have for the Department.

My goal is to continue to provide that kind of leadership to the Department and then get out of their way so

1 that they can implement and get service improvements done.

2 Some of the things that I'd like to point out
3 that the Department has been able to obtain in motor vehicles,
4 first of all, we've brought wait times down in our field offices
5 from highs of over 60 minutes down -- right now we're averaging
6 20 minutes in our field offices. That's 168 different field
7 offices out there around the state.

8 We take great pride in those kind of advances
9 that we've made in making our services more accessible and
10 convenient to our various customers. For example, California
11 vehicle owners can now renew the registration online. This was
12 made possible by the fact that we successfully partnered with
13 insurance companies to verify liability coverage electronically.
14 That has done a lot to shift workload out of our field offices
15 into our online resources.

16 We've also expanded that online renewal concept
17 to the driver's licenses as well, and we're continuing to see
18 the citizens take advantage of that as well.

19 One of the things that we did that helped this
20 online service capability was to discontinue the \$4 credit card
21 fee that we were charging for any kind of online services.
22 Since we've done that last year, the use of these services has
23 continued to grow and has sky rocketed. So, we're very proud of
24 that. It's also had a positive effect in enabling us to be able
25 to look at other payment options on our Internet services as
26 well.

27 We are currently developing a number of
28 additional online applications to give people other service

1 options. But we're also working on a once-and-done philosophy.
2 So, rather than having people come back for multiple visits, to
3 start focusing, now that we're a little more comfortable with
4 wait times, to start focusing more on the quality of the service
5 that we're providing as well.

6 In addition, we've made it a major priority in
7 the Department to do a technology refresh at the DMV. Many
8 improvements have already been made to our various computer
9 systems, but we have some major complements planned for
10 technology refresh over the next couple of years. We're taking
11 a very incremental approach to this. We're looking step by step
12 and complete steps that will keep costs within reasonable limits
13 and also allow for incremental successes along the way.

14 We've also been very focused on our
15 responsibilities in the area of protecting confidential
16 information and privacy concerns to guard against identity
17 theft. We intend to continue to give this a high priority.

18 We've also developed a very good working
19 relationship that had not existed previously with our sister
20 departments within the Business, Transportation and Housing
21 Agency, specifically the California Highway Patrol and the
22 California Department of Transportation. We've also been
23 working closely with the Department of Consumer Affairs on
24 privacy issues and using their expertise constantly on those
25 issues.

26 We've also been working together with the sister
27 departments on the area of motor carrier services, since that is
28 a major issue for a state as far as economic development goes,

1 and there's much between the three of us that we can do to
2 improve the kind of services that we offer to that industry.

3 With that, I'm going to turn it back to the
4 Committee because I know that you probably have a number of
5 questions for me.

6 CHAIRMAN PERATA: Thank you.

7 Senator Cedillo, do you want to open?

8 SENATOR CEDILLO: I was going to defer to Senator
9 Bowen.

10 SENATOR BOWEN: Can I go last?

11 CHAIRMAN PERATA: Okay, you prefer that I lead
12 off.

13 Probably the most important thing you touched on
14 so far is the customer service. I was joking when somebody said
15 you trained at Caltrans and then you went to DMV.

16 [Laughter.]

17 CHAIRMAN PERATA: And I know we're about
18 reversing that trend.

19 What's always concerned me is the tremendous
20 value that Californians put on their automobiles, and that we
21 were very critical of DMV, but I've wondered if our resources,
22 because we don't want to pay car taxes, and I think if we didn't
23 have to pay a license fee and all, they'd be happy, too.

24 I hope Senator McClintock doesn't hear that.

25 How are we situated in terms of per capita costs
26 to really provide the level of service that I think people
27 expect?

28 MS. BORUCKI: Actually, I've got to say the Motor

1 Vehicle Account is rather healthy right now.

2 However, there are a number of pending potential
3 draw-downs on that account in the future, such things as to meet
4 the needs of the different labor union contracts, because it's
5 not just the Department of Motor Vehicles that draws from that.

6 CHAIRMAN PERATA: We're not talking about the
7 Iron Workers, though. Who are we talking about?

8 MS. BORUCKI: We're talking about our CHP
9 officers.

10 And in addition to that, the technology refresh
11 that I talked about will be a potential cost. It won't be a lot
12 each year, but it's a five to seven year project that we're
13 talking about. So, there will have to be funds that we'll be
14 asking the Legislature to set aside for that.

15 So, there are a number of future items coming
16 up. There's also, depending upon the agreement of the
17 Legislature, what we decide to do about the facilities with the
18 Department of Motor Vehicles as well.

19 CHAIRMAN PERATA: You want them in Granite Bay;
20 right?

21 MS. BORUCKI: We need to do something with the
22 Roseville-Rocklin area. That is one of -- I have 12 critical
23 facilities right now that the leases are expiring on. People
24 don't like to lease to the Department of Motor Vehicles any
25 more. We're considered a bad tenant.

26 So, that will be something that we need to deal
27 with in the future. And so, those are all potentials on the
28 Motor Vehicle Account, even though it does look rather healthy

1 right now.

2 CHAIRMAN PERATA: On that point, we had had some
3 discussions earlier in the spring about the need of using funds
4 in that account to capitalize some technology projects.

5 What I just want to go on the record today is
6 that the highest priority as far as I'm concerned of the use of
7 that account has to be bringing the CHP up to strength. I mean,
8 it is embarrassing that we have allowed our road population to
9 increase so dramatically and have not kept pace. And so, that's
10 going to be where we're going to be coming from. And any bricks
11 and mortar, all due respect, will stand down at least in our
12 caucus to the need to make sure that we get the strength. So,
13 don't be surprised.

14 MR. BORUCKI: Understood.

15 CHAIRMAN PERATA: I understand you're going to
16 lose a bunch of folks, going to be retiring, the programmers and
17 all that?

18 MS. BORUCKI: Yes. The Department of Motor
19 Vehicles, not unlike most of state service, is looking at about
20 36 percent of our employees are age 50 and over, which puts them
21 closer and closer to retirement.

22 And that's specifically a "now" need in our
23 Information Services Division, where we have a high number of
24 people that are retiring. And that's especially critical for us
25 because we have a home-grown system at the Department of Motor
26 Vehicles. Nobody teaches that system any more, so it's
27 difficult to go out there and find replacement employees.

28 CHAIRMAN PERATA: I can imagine.

1 While I'm thinking about it, the salary for your
2 job, if you were a bus driver in San Francisco and worked just a
3 little overtime, you'd make more money.

4 [Laughter.]

5 CHAIRMAN PERATA: I just point that out to you.

6 MS. BORUCKI: Thank you.

7 CHAIRMAN PERATA: I've got a few more that I'll
8 just rally back to.

9 Have you collected your thoughts?

10 SENATOR BOWEN: Yes, thank you.

11 CHAIRMAN PERATA: Don't you want to respond to
12 that technology thing?

13 SENATOR BOWEN: Are you ready for me.

14 CHAIRMAN PERATA: Yes.

15 SENATOR BOWEN: A few questions, and I think most
16 of mine are going to focus on technology issues.

17 I do want to applaud the DMV for dumping the \$4
18 surcharge that it had attached to people to renew their car
19 registration over the Internet.

20 I'm told that DMV has estimated the cost of an
21 in-person visit at \$11.42, while dealing with a check or an
22 Internet renewal is about \$2.50 per transaction.

23 So my question is, in light of that, why did the
24 DMV need a backfill in the state budget this year to pay for the
25 processing costs charged by credit card companies? If you're
26 saving the difference between \$11.42 and \$2.50 by getting people
27 to process online, why are we using General Fund money?

28 MS. BORUCKI: Actually, you're not using General

1 Fund money. It is the special fund money coming out of the
2 Motor Vehicle Account.

3 SENATOR BOWEN: Why are we using special fund
4 money that we could use for, say, CHP officers?

5 MS. BORUCKI: What has happened is, the use of
6 the Internet has actually allowed us to take up the growth in
7 the number of people coming in. So that we've actually
8 maintained the steady number of transactions taking place in the
9 field offices, and then we're seeing the growth, although I
10 can't specifically say the growth was all transferred to the
11 Internet, but the numbers are showing that. So, we've been able
12 to maintain service with a growth in there.

13 And we asked for the increased funding to
14 accommodate the kind of growth shift that we think is going to
15 happen to the Internet projected over this year, which we see
16 occurring in the numbers, and then looking at out year.

17 What we would like to accomplish, however, is to
18 give the customers a different kind of payment option other than
19 credit card, which is your highest option -- your highest cost
20 option to use. And in the next nine months, we're hoping to
21 bring online, make the programming changes to bring online
22 electronic funds transfer and make that be available to our
23 customers to be able to use for those online services.

24 SENATOR BOWEN: But I think the question is, if
25 that growth is coming in at a much lower rate, it's costing a
26 lot less, why are we backfilling the agency, or why are we
27 adding funding?

28 MS. BORUCKI: We have not seen the savings for

1 the shift to the Internet because the savings are going to
2 handle the growth that we're continuing to see. So, we did not
3 ask for a workload increase for the increase in the number of
4 transactions that we're dealing with, but we did ask for the
5 increase to our budget to handle the increased cost of using the
6 credit card on the Internet.

7 SENATOR BOWEN: All right. It just strikes me as
8 sort of a strange way to handle the budgetary issue, to have it
9 based on the Internet fees if the costs are much higher in
10 person.

11 MS. BORUCKI: I understand, but we're talking
12 about two different calculations: one being the calculations
13 for the delivery of the service, and the workload for the
14 delivery of service, and that is going up; and then there's the
15 shift in how that service is provided.

16 SENATOR BOWEN: So what you're saying is that you
17 would be asking for a cost of workload increase budget
18 augmentation if you were not doing the Internet-based
19 transactions. And instead, you're asking --

20 MS. BORUCKI: Yes, yes.

21 SENATOR BOWEN: Okay.

22 You are paying a three percent fee to the credit
23 card companies for each transaction; is that correct?

24 MS. BORUCKI: Actually it was at the time that
25 the \$4 fee was first applied. It was a two percent. They, last
26 spring, lowered it to 1.57 percent of the cost of the
27 transaction, the total amount of the transaction.

28 If we were to total all those costs, they would

1 probably be running around a \$3 fee now.

2 SENATOR BOWEN: What else can the DMV do to
3 automate functions and conduct more business via the Internet?
4 We know that we're going to continue to see, as California's
5 population grows, more drivers and more motor vehicles, that is,
6 unless cost of gas continues to -- anyway, what can you do to
7 further automate?

8 And talk a little bit about the DMV's computer
9 system.

10 MS. BORUCKI: We -- we have actually gone through
11 and looked at all the different services and transactions that
12 we deal with with our customers. And we have prioritized those
13 to move those over to web-enabled transactions.

14 And -- but one of the key drawbacks that we have
15 before us right now is the fact that we do have a computer
16 system that's archaic, that's in a language that was fantastic
17 at the time in the '60s, but the DMV chose to use it, but now
18 you probably could not find anybody who -- other than people who
19 are working for the DMV, that even know anything about that
20 language.

21 SENATOR BOWEN: I was here during the last
22 attempt to move the DMV to a different computer system. And it
23 didn't exactly work the way it was planned.

24 But I'm really surprised to hear that the DMV is
25 still -- where are you in the process of looking at a
26 replacement to a more modern architecture?

27 MS. BORUCKI: We have laid out a plan for our
28 Secretary at the Business, Transportation and Housing Agency

1 that we'll be presenting to her. We call it a technology
2 refresh project.

3 It's a very incremental stepped approach to both
4 taking care of our databases and moving those to a more modern
5 environment, as well as then attacking the individual programs
6 and code for our system.

7 Our concern is that we do it in small,
8 incremental steps. We're estimating a five-year timeline to
9 accomplish this. Each step would be independent of the other,
10 so that if we got to a point and we had to stop because the MVA
11 account had -- didn't have enough money and we had to wait a
12 year or two, nothing would be lost.

13 It's also important to us that we don't impact
14 current operations and current services. And so, this small,
15 incremental approach was also -- would lend itself to that as
16 well.

17 And the key for us is moving it to a modern-day
18 language, that it's easy to go out and hire staff who are coming
19 out of school and recognize these programs, and that aren't
20 necessarily proprietary.

21 SENATOR BOWEN: But you have a language program;
22 right? You're operating on a whole architecture that you would
23 never use now.

24 MS. BORUCKI: That you couldn't find right now.
25 Half of it, it's home-grown, and half it was commercial at one
26 time.

27 SENATOR BOWEN: The reason that I raise this
28 issue is that it has really gotten in the way of the DMV's

1 ability to be flexible in dealing with various fee structures,
2 changes to fee structures, either reductions or increases.

3 As you know, I had a bill that would have
4 required the DMV to put auto manufacturers' recall information
5 on the registration notice, which is similar to what we already
6 do with smog violations. And the DMV attached a \$934,500
7 first-year cost to the measure, which is a really astonishing
8 amount of money to basically program what is, in essence, a
9 look-up table and a command to print. And I'm told that that is
10 attributable to the computer system.

11 Can you comment on how your technology refresh
12 would help us solve the problem of getting fee changes, and so
13 forth, done on a timely basis?

14 MS. BORUCKI: It's difficult to explain the
15 existing state of the DMV system. My staff best expresses it as
16 a bowl of tangled spaghetti of code and programming, and that
17 the business rules for the various applications and programs in
18 the Department are so embedded within the code, and there are
19 very few people left within the Department who even know what
20 was embedded in that code.

21 So, every time there's a change which, in today's
22 world, if we were using a modern architecture and language,
23 would be a very simple thing to do, becomes a huge project to
24 first go in and untangle that spaghetti and figure out what the
25 codes are, and then turn around and reprogram it, and then, of
26 course, go through the testing for it.

27 SENATOR BOWEN: I think what I'm asking is, I
28 certainly have been over the years in my work in technology

1 systems, really supportive of a phased approach and so forth.
2 But I'm not at all sure that you can refresh this system. It
3 may be better to flush than to refresh.

4 [Laughter.]

5 MS. BORUCKI: But it would take at least a bunch
6 of incremental flushes over five years of time. And that's
7 basically what we will be doing, is migrating a piece at a time
8 over to a more modern, more robust technology.

9 SENATOR BOWEN: This is not just to sort of try
10 to redo this in the current system. You really are moving to a
11 completely different --

12 MS. BORUCKI: Yes, to leave the other languages
13 and infrastructure behind.

14 SENATOR BOWEN: My final question, and I think
15 you've addressed some of the issues I have, but one of the other
16 issues that we've dealt with over the years is the question of
17 identity theft at the Department of Motor Vehicles, and the
18 concern about DMV workers taking bribes in exchange for either
19 driver's licenses or ID cards, and concerns with stolen stock.

20 I understand that where ever you have a
21 workforce that has some number of people working at a fairly low
22 wage, there's going to be a few people who just decide that
23 that's a fine way to increase their salary.

24 But that makes internal controls and evaluation
25 of what the patterns of granting licenses and using stock, and
26 so forth, are really important.

27 How do you do that, and can the computer system
28 you're using give you any kind of data that is useful in that

1 kind of oversight?

2 Just by comparison, I'm thinking about our
3 financial services institutions. Many of us have had the
4 experience of having a call from our credit card company saying,
5 "Did you just make a down payment on a monster truck? That's
6 not your typical purchase."

7 Do you have any kind of capability of looking at
8 what's happening in the various DMV offices to determine whether
9 or not there's something unusual going on?

10 MS. BORUCKI: Yes, we do. We do have, or we did
11 have, some auditing programs in place to catch that.

12 There's a few things that have happened in the
13 course of the last year-and-a-half that we've added to what
14 existed prior, and especially since we recently had the major
15 investigation and arrest in the Oakland-Clairmont offices.

16 And when I came on board last November, I took an
17 interest in the Investigations Unit, the enforcement unit in the
18 Department of Motor Vehicles, and they would submit to me on a
19 routine basis these wonderful write-ups of their reports and
20 close-out of their cases, but they were only going to me. And
21 so, the first thing I asked them to do was, here and now, sit
22 down with the program deputy director with your close-out of
23 your investigation, and go through with them what you found, how
24 the behavior was being perpetrated, and get it corrected and
25 fixed, fix the holes. So, that's done a lot to improve things.

26 What we also did in May of 2003, and this is in
27 particular to what was happening in the Oakland-Clairmont
28 office, is, there was an ability to key in a fictitious Social

1 Security number as a bypass for those people eligible who were
2 eligible for a driver's license but were not eligible for Social
3 Security numbers. We've eliminated that now because that was a
4 source of continual fraud.

5 So, there are other ways now to accommodate those
6 people other than doing this bypass key.

7 We've also made it mandatory now, and there are
8 some exceptions that are made, but another way that fraud would
9 be perpetrated is, people would come in and ask for an address
10 change, or they would ask for a replacement card, and we would
11 automatically do a new photo. And that was a classic example of
12 identity theft. That's not allowed anymore either.

13 SENATOR BOWEN: You actually look up the photo
14 now, right, to see if it matches the face of the person who's in
15 front of you in the case of a lost driver's license?

16 MS. BORUCKI: That's right. We do what we call a
17 one-to-one match on the photo with the name.

18 And then we've also begun to mask the Social
19 Security numbers except for the last four digits on all future
20 forms that are brought up before a field agent, other than the
21 initial application. And then after that, they don't have
22 access to that phone [sic] number anymore.

23 SENATOR BOWEN: What are you doing about the
24 problem of the information on the mag strip on a driver's
25 license, and the concern that a reader could be used to obtain
26 driver's license information and retained?

27 It's common for a driver's license to be swiped,
28 for example, in a facility that serves adult beverages.

1 MS. BORUCKI: Right. And we will routinely will
2 audit, make sure that they're following the state law; that they
3 aren't maintaining and using that data.

4 SENATOR BOWEN: You're auditing bars and grocery
5 stores?

6 MS. BORUCKI: No, no, no, no. I'm sorry. We're
7 auditing our different business partners, but we do periodically
8 remind people that they aren't supposed to be doing that, that
9 that's basically for information.

10 Quite honestly, though, in meeting recently with
11 some of the restaurant and entertainment industry, we also met
12 with the grocery associations, because we were looking at, you
13 know, what better security features could we offer on these
14 cards to help out the different industries and also the
15 financial institutions.

16 Very few of them even mentioned that they use the
17 magnetic stripe on the card. And, you know, that they don't
18 really avail themselves of that.

19 SENATOR BOWEN: Who does use the mag strip?

20 MS. BORUCKI: The only ones that we heard from
21 were basically law enforcement. It is an aid for them.

22 SENATOR BOWEN: Is the information encrypted.

23 MS. BORUCKI: I don't know.

24 SENATOR BOWEN: Does the Department have any
25 plans to move from a magnetic strip to a RFID technology for
26 driver's license?

27 MS. BORUCKI: No, we have no plans to move to
28 RFID. And as far as -- we haven't looked at it. It seems to be

1 a bit too much of frail technology for a driver's license
2 anyway.

3 But no, we don't have any plans to go there.

4 SENATOR BOWEN: All right. Thank you.

5 CHAIRMAN PERATA: Senator Cedillo.

6 SENATOR CEDILLO: I'm not quite sure you answered
7 the Senator's question with respect to the mag strip.

8 Did she answer your question about what they were
9 doing to stop the access of information from that?

10 SENATOR BOWEN: Well, I think my question was
11 about storage because the strip can be scanned, and it, I
12 presume, scanned by anybody who has a scanner. That was why the
13 encryption question was important.

14 MS. BORUCKI: Unlike the RFID, it's contact.

15 SENATOR BOWEN: You're welcome to follow-up on
16 the question, Mr. Cedillo.

17 SENATOR CEDILLO: I'm not quite sure I heard an
18 answer to your question.

19 SENATOR BOWEN: I think you didn't.

20 SENATOR CEDILLO: With respect to this, I'm
21 reading here, the Sacramento Bee, March 12, 2005, Saturday, and
22 it talks about the DMV annually selling its records to Choice
23 Point, 19.9 million.

24 Who is Choice Point, and why do you do that?

25 MS. BORUCKI: We have contracts with Choice Point
26 for various information, that they contract with us and then
27 turn around and give to other end users. We know who those end
28 users are. They have to tell us who they're contacting us on

1 behalf of to get that information.

2 They basically operate as a middleman for
3 insurance companies or others.

4 Choice Point is not one of the companies, though,
5 that we give out any kind of personal identifying information
6 to, unless it may be for a safety recall notice.

7 SENATOR CEDILLO: Who are the end users?

8 MS. BORUCKI: The end users are basically
9 insurance companies, and -- or it could be other government
10 agencies. In that case, they may come directly to us.

11 SENATOR CEDILLO: Do you have authority to do
12 that?

13 MS. BORUCKI: Yes, we do.

14 SENATOR CEDILLO: What's your source?

15 MS. BORUCKI: I believe it's in the Vehicle Code.
16 I couldn't cite where.

17 SENATOR CEDILLO: Choice Point's under
18 investigation. Does that concern you?

19 MS. BORUCKI: Yes. As a matter of fact, I had
20 auditors back there until the hurricane hit last week, auditing
21 Choice Point right now.

22 SENATOR CEDILLO: Pennsylvania's suspended their
23 relationship with Choice Point. What's going to be our
24 response?

25 MS. BORUCKI: Pennsylvania actually had a broader
26 relationship with Choice Point than California does. California
27 is very restrictive in the kind of information that I can share
28 with these companies, or that I give out to these companies.

1 Pennsylvania did not have the same kind of
2 privacy laws that the State of California does, and they were
3 actually turning over entire driver's license databases to
4 Choice Point, which we do not do.

5 SENATOR CEDILLO: I think that's more responsive
6 to the question of what was the relationship of Pennsylvania to
7 Choice Point.

8 My question is, what are we going to do vis-a-vis
9 our relationship with Choice Point? Pennsylvania has suspended
10 their relationship. What are our plans?

11 MS. BORUCKI: We really don't have any plans to
12 change our current relationships with them.

13 We follow the state law as far as the privacy and
14 what kind of information we can share, which is restrictive,
15 rightly so.

16 And unless something comes back from our
17 auditors, which will take a couple of months to complete that
18 audit, that tells us that there's something else out there that
19 we need to address.

20 SENATOR CEDILLO: So, can you tell me what does
21 DMV sell to Choice Point?

22 MS. BORUCKI: I could not tell you off the top of
23 my head right now.

24 SENATOR CEDILLO: Driver's license plate numbers?

25 MS. BORUCKI: No.

26 SENATOR CEDILLO: Vehicle ID numbers?

27 MS. BORUCKI: If they're -- no. VIN numbers?

28 SENATOR CEDILLO: Owner names?

1 MS. BORUCKI: Personal identifying data, no.

2 SENATOR CEDILLO: Names of lien holders?

3 MS. BORUCKI: I'm not sure, Senator. I'd have to
4 get that information and get back to you.

5 SENATOR CEDILLO: You brought up the situation,
6 the tragic situation in New Orleans. We have just, I believe,
7 committed to receive a number of citizens from New Orleans. I
8 don't doubt that many more will be coming.

9 Given that all their records appear to be
10 destroyed, the States of Mississippi, Alabama, Louisiana, will
11 we issue licenses to these citizens of the United States?

12 MS. BORUCKI: Actually, the states have been
13 working in conjunction with each other. I know that Louisiana
14 and Mississippi have made their databases available to the other
15 states where the victims of the hurricane are relocating.

16 In some cases, Louisiana and Mississippi are
17 making licenses available and mailing them out to these
18 individuals, either before they leave their states, or will mail
19 them to their relocated position.

20 If they're interested in obtaining licenses,
21 California driver's licenses, we're working those other states.
22 If they have a Social Security number, it makes it very simple
23 for us. And we're also working with the other states to verify
24 their identity so that we can make it a simple process for them.

25 SENATOR CEDILLO: Speaking of identify, tell me
26 if the State of California intends to comply with the Federal
27 REAL ID Act signed by the President, voted on by 100 Senators,
28 supported by 368 Congressional Members?

1 MS. BORUCKI: The REAL ID Act is a federal law
2 that would require a state to basically opt in. And that will
3 basically be the purview of the Legislature and the Governor's
4 Office to pass law and sign the bill to choose to opt into the
5 REAL ID Act.

6 SENATOR CEDILLO: Tell me about the consequences
7 of not opting in.

8 MS. BORUCKI: The consequences of not opting into
9 the REAL ID Act would mean that the California driver's license
10 would not be recognized by -- under federal law as a valid piece
11 of identification for entering federal buildings, or boarding
12 airplanes. And we're not sure of how far that scope goes yet.

13 SENATOR CEDILLO: Are you suggesting that Senator
14 Battin could not use his California driver's license to board an
15 airplane as an identifier if we didn't comply with the REAL ID
16 Act?

17 MS. BORUCKI: According to the REAL ID Act, if we
18 do not meet the standards that they have set forth in federal
19 statutes as well as regulations in California, then the
20 California driver's license could not be used after May 11th,
21 2008 as an identification document.

22 SENATOR CEDILLO: What other consequences would
23 result?

24 MS. BORUCKI: That's probably the major
25 consequence of it. I'm not sure.

26 There would probably be economic fall-out, I
27 don't know, of not being able to use the driver's license as an
28 identification card, which seems to be used today.

1 SENATOR CEDILLO: Can you elaborate, please?

2 MS. BORUCKI: Not really. I'm -- I am waiting to
3 hear from the federal government, as I'm sure everybody else is.
4 The regulations for implementation of the REAL ID Act is
5 supposed to be out by May of 2006, is the deadline that they
6 have for that. And we're hoping to get a better understanding
7 of what those consequences are.

8 Right now, it's just an "et cetera" in the
9 federal statutes, and we're looking for further clarification.

10 SENATOR CEDILLO: Specifically what are you
11 waiting to be clarified?

12 MS. BORUCKI: There are a number of issues that
13 need to be addressed in the federal regulations that have to do
14 with implementation; what those standards are that the State of
15 California will have to meet that were not laid out in statutes,
16 but have been left up to the Department of Homeland Security to
17 further define in federal regulations.

18 SENATOR CEDILLO: What are those?

19 MS. BORUCKI: There's a number of those,
20 beginning with --

21 SENATOR CEDILLO: How many?

22 MS. BORUCKI: I couldn't tell you off the top of
23 my head.

24 SENATOR CEDILLO: Two, three, five, ten, twenty,
25 twenty-five?

26 MS. BORUCKI: I'd say right now we for ourselves
27 have probably identified at least, I don't know, ten, twelve.

28 SENATOR CEDILLO: Tell me what are the twelve

1 issues or questions that our Department of Motor Vehicles has
2 which we are waiting upon clarification from the Department of
3 Homeland Security?

4 MS. BORUCKI: Well, I can tell you the largest in
5 my mind is what I call the day forward issue, and does that mean
6 that starting May of 2008, from that day forward, my driver's
7 licenses have to be -- meet the federal standard? Or do I have
8 to somehow between now and May of 2008, go back and somehow
9 reverify that all 24 million outstanding driver's licenses and
10 ID cards meet the federal standard and have them marked as such,
11 which means reissuance of all the driver's licenses, which means
12 all those citizens would have to come back into the DMV office
13 with a birth certificate, or some kind of proof of identity for
14 me.

15 That's one of the largest concerns that we have
16 right now.

17 SENATOR CEDILLO: So, number one is this question
18 of day forward.

19 SENATOR BOWEN: Mr. Cedillo, could you ask her to
20 repeat the answer? I wasn't sure I understood it.

21 SENATOR CEDILLO: Would you please repeat that?

22 MS. BORUCKI: Okay.

23 What we have is, in the law it says that
24 beginning in May of 2008, in order for the driver's licenses to
25 be accepted by the federal government for identification
26 purposes, they have to meet the standards set forth in the
27 regulations in the statutes.

28 The question that we have posed to the Department

1 of Homeland Security is, does that mean that all of my 24
2 million outstanding driver's license and ID cards have to be
3 reverified per all the standards that'll be laid out prior to
4 May of 2008, or will it be day forward on that issue.

5 SENATOR BOWEN: You asked for guidance on that
6 issue?

7 MR. BORUCKI: We've raised it as a concern with
8 the Department of Homeland Security, about our ability to
9 reverify that within a two-year timeframe, in essence, by the
10 time the regulations come out, because that would mean a visit
11 by every one of us to a field office.

12 SENATOR BOWEN: I'm just horrified contemplating
13 what that might actually be like. I'm thinking about just going
14 to one Senior Citizens Center and explaining to everyone there
15 that they have to get their birth certificate and a utility bill
16 and physically go, stand in line, at the Department of Motor
17 Vehicles.

18 Mr. Ashburn is looking forward to staffing one of
19 those lines. I can tell by the look on his face.

20 [Laughter.]

21 SENATOR ASHBURN: We're going to hold Town Hall
22 Meetings.

23 [Laughter]

24 SENATOR BOWEN: So, it just seems me that a
25 response that's much stronger than a request for guidance is
26 probably in order, and that the Department and the
27 administration ought to be thinking about, clearly, the security
28 consequences of having people who have not been through that

1 check, but balancing that against the enormous cost, and
2 disruption, and confusion, and in particular, setting up a
3 procedure for what you will do if someone has not complied, and
4 what that means for the status of their driver's license, and
5 how you're going to deal with the workload.

6 I frankly can't imagine it.

7 MS. BORUCKI: We have the same concerns.

8 We shared with the Department of Homeland
9 Security, and it wasn't a request for guidance. What we did
10 was, we shared with them, here are the challenges that we see
11 for us, and the impact that it is going to have in one of your
12 largest states. And these are issues that we think we need to
13 step back and take a stronger, harder look at these, and how
14 you're expecting us to implement these.

15 SENATOR BOWEN: Is there a way to set up a
16 procedure for doing that beginning now for commercial driver's
17 licenses? So that, for example, anybody who has a Class C
18 license, and therefore is engaged in truck driving, or whatever,
19 can voluntarily come in at some point in the next couple of
20 years and deal with this in advance.

21 What kind of creative thinking are you doing
22 about how --

23 MS. BORUCKI: We're doing a lot of out-of-the-box
24 thinking on this because is -- if we need to revisit these 24
25 million documents, it is not going to be easily done in those
26 168 field offices.

27 We're also working with the Office of Vital
28 Statistics within the Department of Health Services to deal with

1 the birth certificates and other kinds of verification
2 documents, death certificates as well.

3 SENATOR BOWEN: I hope you don't have any drivers
4 that have death certificates.

5 MS. BORUCKI: That becomes an issue for us in
6 identity theft.

7 But we're -- so, we're trying to think of other
8 options that we have available to us if we do have to go down
9 that road as well.

10 SENATOR BOWEN: When are you expecting to make a
11 decision about whether or not you need to set that up?

12 Let's assume that you never hear anything from
13 the federal government about that, or that you don't hear for
14 the next -- it takes a year-and-a-half for the wheels of the
15 federal bureaucracy to decide what they're going to do.

16 Will you have done anything towards the potential
17 need to meet that goal in the interim?

18 MS. BORUCKI: We are doing some initial planning.

19 And I'm sorry. I didn't answer your question on
20 the CDLs.

21 But we are doing some initial planning. We're
22 looking at worst case, which is if we have to the 24 million.
23 We're also looking at if it is day forward, we have been calling
24 Homeland Security on a weekly basis, pestering about the status
25 of the regulations, and do they need help.

26 SENATOR BOWEN: And I'm sure they're telling you,
27 we're busy in Louisiana and Mississippi right now.

28 MS. BORUCKI: Uh-huh, yes, when you can get

1 through.

2 And so, you know, there's a number of
3 challenges. As I mentioned, we were working with Vital
4 Statistics. They've all ready been able to do digital images on
5 birth certificates for the State of California, going back to
6 1980. We're working on them to be able to electronically verify
7 and to expand that database with them.

8 And nationally, the different states are working
9 together as well, because we do have to be able to verify and be
10 able to have access to each other's databases, which is mandated
11 through the REAL ID Act as well. And that becomes important
12 when you need to verify identity source documents from other
13 states.

14 Unfortunately, I can't say that all 50 states are
15 as advanced as our state in that area.

16 SENATOR BOWEN: I think it's useful to keep in
17 mind that until two years ago, all of the 58 counties in
18 California, two or three years ago, had a different format for
19 birth certificates, so multiply that by all the states, and the
20 parishes, and townships, and counties.

21 I just don't know how you're going to do this
22 even going forward without some pretty massive disruptions and
23 financial expenditures.

24 MS. BORUCKI: It's going to be a major
25 challenge.

26 We've -- I've put together a project team to
27 specifically look at the different issues. Right now what we're
28 trying to is just identify the challenges for us, and what the

1 magnitude of those are.

2 SENATOR BOWEN: I have a feeling that before we
3 get to the next DMV budget hearing, you're going to have
4 Legislators who want to see a timeline for when you're going to
5 do what tasks, and how you're going to set up adjunct
6 operations. Because clearly, you're not going to be able handle
7 all of this with the existing DMV facilities. So, some creative
8 thinking about contracting either with Highway Patrol offices,
9 or county clerks, or some other place where some of this work
10 can get done, because there is just no way, at least that's
11 my --

12 MS. BORUCKI: I don't disagree with you,
13 Senator.

14 SENATOR CEDILLO: So, we're back at day forward,
15 May of '08, you may have 28 million people who have to come
16 back, or you may have to have 28 million people come through
17 before that, 24 million. I don't want to overestimate here.

18 What is your second issue?

19 MS. BORUCKI: The second one was what the Senator
20 and I were talking about as far as verifying identity source
21 documents, both within the state and outside of the state.

22 SENATOR CEDILLO: And your plan for that is?

23 MS. BORUCKI: Senator, right now we're trying to
24 identify all the challenges and the problems before us, and not
25 just within this state, but in conjunction with the other
26 states. And then we'll start to tackle how we respond.

27 SENATOR CEDILLO: The third problem is?

28 MS. BORUCKI: Let's see. I already talked about

1 day forward.

2 The third problem would be the -- we're going to
3 be required to retain electronically all copies of any identity
4 source documents that are presented.

5 SENATOR CEDILLO: I'm sorry, can you restate that?

6 MS. BORUCKI: We're going to be required to
7 retain copies, electronic copies, of any identity source
8 documents that are presented at the DMV offices. So, not only
9 will we have the problem of verifying the authenticity of the
10 identity documents, but also having to retain electronically
11 these documents for eight to ten years, which are huge databases
12 of scanned images. Right now, we don't have that capability in
13 our field offices to do that kind of scanning of documents as
14 they come in.

15 SENATOR CEDILLO: What's your plan for that?

16 MS. BORUCKI: Senator, as I mentioned, right now
17 we're just trying to identify all the challenges, and then we'll
18 start to figure out how we tackle this.

19 And again, a lot of this is presumption on our
20 part until we receive the regulations from the federal
21 government.

22 SENATOR CEDILLO: My reading, my recollection of
23 the bill, the feds are pretty clear that we shall be in
24 compliance by that date. In other words, by then, we have to
25 demonstrate that we are in compliance.

26 My sense would be that if we failed to
27 demonstrate that we're in compliance, that we would at least
28 have to demonstrate good cause and good faith preparation for

1 that.

2 So what are the plans for that?

3 MS. BORUCKI: As I mentioned, we are -- right now
4 I've put together a project team. We're looking at the bill.
5 We're looking at what the challenges are. Where we comply today
6 with what's specified in the bill. What it is that we think we
7 may be out of compliance with. And then, once we've identified
8 that, and putting together the possibilities for how to react to
9 that.

10 Again, some of those areas could go one way or
11 the other, depending on how the federal Department of Homeland
12 Security issue their regulations.

13 SENATOR CEDILLO: How so?

14 MS. BORUCKI: There are a number of questions
15 that we've raised. And until we get clarification or better
16 definition out of those regulations, we're not really sure which
17 way we would need to go in implementation.

18 SENATOR CEDILLO: Can you be more specific?

19 MS. BORUCKI: I think the day forward explanation
20 or example that I gave earlier is an example of that.

21 SENATOR CEDILLO: If you can restate that, on
22 this question of retaining electronic documents, what is it that
23 you need to do before May of 2008 to put yourself in that
24 position?

25 MS. BORUCKI: On --

26 SENATOR CEDILLO: Whether it's the day forward or
27 not.

28 MS. BORUCKI: We have to decide whether or not

1 we're going to retain paper copies, which they do allow for, or
2 are we going to retain electronic copies. If it's electronic
3 copies, providing the infrastructure and the databases and
4 computer systems to be able to maintain those databases.

5 To have the equipment in all of our 168 field
6 offices for each of those windows where we process driver's
7 licenses to be able to scan those documents.

8 Or, doing the out-of-the-box thinking that
9 Senator Bowen talked about, if we have to get everybody into
10 position before May of 2008.

11 So, there's a number of rather major issues that
12 we need to address and challenges for us there, given the state
13 of our current computer systems and databases.

14 SENATOR CEDILLO: Tell me about this option. I
15 don't recall reading that you had an option on retaining some
16 documents. My sense was that you had to retain images.

17 So, you have an option of either the retention
18 electronically, or maintaining the paper, hard copy, for ten
19 years. Is that what you're saying?

20 MS. BORUCKI: Yes.

21 SENATOR CEDILLO: So, you have to make a
22 decision?

23 MS. BORUCKI: Of what would be the most cost
24 efficient and cost effective and expedient.

25 SENATOR CEDILLO: What's your plan? How are you
26 going to do that?

27 MS. BORUCKI: As I mentioned, we've got a project
28 team assembled that is looking at everything that's included in

1 implementation of the REAL ID Act. And they're identifying the
2 challenges. We're waiting for regs, and -- and we'll come up
3 with the options.

4 We know we have to have this within a certain
5 timeframe, as Senator Bowen mentioned. We know that the
6 expectation will be there during the spring, during the budget
7 hearings, to have better information.

8 SENATOR CEDILLO: What are the legal parameters
9 of what you can do to prepare?

10 MS. BORUCKI: To plan.

11 SENATOR CEDILLO: Uh-huh.

12 MS. BORUCKI: To plan and do the daily managing
13 of the department, and to prepare.

14 It's pretty standard within any department's
15 operations. I certainly can't go out and begin to implement the
16 REAL ID Act until there is some kind of legislation that the
17 Legislature has decided upon and the Governor has signed.

18 I do have the authority, though, to analyze and
19 plan for something.

20 SENATOR CEDILLO: Go ahead. You're at number
21 three, your other issues.

22 MS. BORUCKI: Actually I think I'm higher than
23 three.

24 As I mentioned to you, Senator, my memory is not
25 as good as it should be sometimes. I doubt that I'll get up to
26 twelve.

27 Another issue with the REAL ID Act is that they
28 mandate the term of a license or an identification card is no

1 longer than eight years.

2 In the State of California, we issue driver's
3 licenses for a term of five years, and then you're then allowed
4 to, if you're a driver in good standing, to renew that at least
5 two more times, for a length of 15 years before you're required
6 to come in and reverify your identity and have a new picture
7 taken.

8 Our issue is the impact to our driver's license
9 terms because of this eight-year requirement. Does that now
10 mean that we can no longer have a driver's license renewal by
11 mail program? Is the intent here that --

12 SENATOR CEDILLO: Process and procedure.

13 MS. BORUCKI: -- every eight years, everybody
14 come in.

15 SENATOR CEDILLO: So, you're seriously asking,
16 when they say a term no longer than eight years, you're
17 seriously waiting for Homeland Security to tell you whether or
18 not you can mail that in.

19 MS. BORUCKI: We are looking for clarification as
20 the intent, and it's not just us. It's also New York State.
21 It's some of the other states that also participate in the
22 renewal by mail program.

23 Is the intent that every eight years, the person
24 show up in person again in the a field office to reverify their
25 source documents, identity source documents, as well as receive
26 a new photo?

27 And that isn't necessarily clear in the
28 document.

1 And also, our identification cards today are good
2 for up to ten years.

3 SENATOR CEDILLO: Right. So, them telling you
4 eight years is the max, is it really a question for the
5 Department to wait for regs when they say, eight years is the
6 max, that they really think an ID card can be issued for ten
7 years?

8 MS. BORUCKI: Eight years is the max as defined
9 in the federal law. We need to understand what that means. Can
10 the term be no longer than eight years, or the intent is that
11 the person has to come in and reverify identity every eight
12 years?

13 SENATOR CEDILLO: My question was, I thought I
14 heard you say that an ID card could last ten years?

15 MS. BORUCKI: Under California law.

16 SENATOR CEDILLO: Right. My reading was that
17 REAL ID says that they can only last eight years.

18 MS. BORUCKI: That's right, but that was one of
19 the issues that I mentioned.

20 SENATOR CEDILLO: So, it just seems to me that
21 that is something that seems clear to me on its face, that eight
22 years is the max for the term. Therefore, we would have to, if
23 we were going to be in compliance, have to accommodate and
24 change our ten-year ID card to an eight-year ID card.

25 MS. BORUCKI: The core issue for the Department
26 though is on the driver's license side, does the person have to
27 come in and visit a field office? That's the issue that we have
28 there, not so much the term of eight years.

1 SENATOR CEDILLO: What other issues? Number
2 five.

3 MS. BORUCKI: Under California law, we do not
4 have a proof of residency requirement. The REAL ID Act now has
5 a proof of residency requirement which would be new for our
6 state.

7 And it is not specified in the statute. It is
8 left up to Department of Homeland Security and the regulations
9 to specify how verification of residency will be satisfied or
10 meet federal standards.

11 SENATOR CEDILLO: Do you have proposals for that?

12 MS. BORUCKI: No. We do know what other states
13 avail themselves of, as far as requiring you to bring in utility
14 bills, or something that shows that you've got a place of
15 residence, and you've been there for sometime.

16 But no, we don't have any specific proposals at
17 this time.

18 SENATOR CEDILLO: Why is that?

19 MS. BORUCKI: Again, because we're still at the
20 formative stages of trying to figure out what the challenges are
21 in the bill, and what it is, and how that would impact our
22 operations.

23 And again, we're waiting for regulations as well
24 from the federal government.

25 SENATOR CEDILLO: A break for her, for the
26 reporter?

27 CHAIRMAN PERATA: We will take a short break.

28 [Thereupon a brief recess

1 was taken.]

2 CHAIRMAN PERATA: I'm going to ask, since we
3 have a number of other nominees here, for those in support to
4 please come forward. Just be very brief, you name and all that.

5 MR. ANDERSON: Good afternoon, Senators. I'm
6 Assistant Commissioner Arthur Anderson from the California
7 Highway Patrol. I'm here on behalf of Commissioner Mike Brown
8 and all the 10,000 men and women of the California Highway
9 Patrol.

10 We want to just voice our support for Ms. Borucki
11 as Director of DMV. She's been a great asset for the people of
12 the State of California, and also wonderful to work with, and
13 supportive of the California Highway Patrol and our mission in
14 providing services to the people of the State of California.

15 Thank you.

16 CHAIRMAN PERATA: Thank you, sir.

17 Next.

18 MR. PERRY: Mr. Chairman and Members, Randy
19 Perry on behalf of Aaron Read and Associates on behalf of the
20 California Association of Highway Patrolmen, in full support of
21 this appointment.

22 CHAIRMAN PERATA: Thank you.

23 MR. WELCH: Peter Welch, with the California
24 Motor Car Dealers Association.

25 We urge your Aye vote in confirming the Director.
26 Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. CONRAN: Senators, I'm Jim Conran,

1 representing the California Small Business Association, the
2 Small Business Roundtable. I'm also the President of Consumers
3 First, and a former Director of the California Department of
4 Consumer Affairs.

5 On behalf of those organizations, I'm supporting
6 the Director's appointment. I think it's very important to
7 consumers and small businesses that management matters, and that
8 an agency should be run efficiently. I think the record of
9 savings of time for consumers, using the Internet, of telephone
10 communications being cut down, I think are very positive to
11 consumers.

12 And as you said, Senator, our cars are pretty
13 important to us. That's how we get to work. That's how
14 commerce operates. And I think the Director has shown in her
15 tenure a real dedication and commitment to the improvement of
16 agency and its efficiency, and I think that that's important.
17 Hopefully, she'll have the opportunity to continue.

18 CHAIRMAN PERATA: Thank you.

19 Further?

20 Okay. Is there any opposition?

21 MS. SHAHAN: Mr. Chairman and Members, I'm
22 Rosemary Shahan, President of Consumers for Auto Reliability and
23 Safety.

24 I feel sure that if the Governor had nominated
25 Ms. Borucki to be my neighbor, I would be delighted. But he
26 nominated her to be head of the DMV.

27 We're very concerned because the DMV has
28 important consumer protection and auto safety responsibilities,

1 And we're concerned about this administration's record on
2 those.

3 I provided you with a letter. I won't repeat
4 what's in the letter.

5 It's important to keep in mind that for most
6 Californians, a car is their second-largest ticket purchase.
7 It's a very expensive purchase. They need protection from this
8 agency.

9 The industry's very well and ably represented by
10 the gentlemen who testified in support of this nomination. And
11 I know because I've had my clock cleaned by them on occasion
12 legislatively. And they're very capable of representing their
13 industry.

14 This is an agency --

15 CHAIRMAN PERATA: I'm confused. Cleaning
16 somebody's clock? Talking about you?

17 MS. SHAHAN: They do a good job for their
18 industry.

19 And this is an agency that has the responsibility
20 of representing the public's interest and regulating those
21 industries.

22 And it was unprecedented, I believe, for this
23 agency to come out in opposition to safety legislation, Senator
24 Bowen's SB 113, and to the Car Buyers Bill of Rights.

25 What they ended up with in the Car Buyers Bill of
26 Rights is legislation that gives them even more responsibilities
27 than they had under the bill that the Governor vetoed. So, you
28 know, if the concern was the impact on the agency, and whether

1 it could fulfill those responsibilities, it now has even more
2 responsibilities. Provisions that were in the Civil Code, they
3 were largely up to private enforcement, or that were not in the
4 bill at all because the bill did not include the cooling off
5 period as it went to the Governor, it now includes a two-day
6 cooling off, and that's part of the Vehicle Code. So, a great
7 deal of the enforcement is to be left up to this agency.

8 It's also important to keep in mind that vehicle
9 crash is the number one killers of youth nationally and in our
10 state. This agency has an extremely important responsibility to
11 protect the public, especially our young people, from unsafe
12 cars. And I just don't buy their figures in the opposition to
13 SB 114. They gave no indication at how they arrived at those
14 figures. And even if we assume that their figures were
15 accurate, lifetime medical care for one head-injured child
16 exceeds \$5 million. If that amount of money, if a safety recall
17 compliance is improved under the bill, and we have every reason
18 to expect it would be, it's a great bargain. It's extremely
19 cost effective in terms of public health and safety.

20 So, I would hope that if the nominee is
21 confirmed, that the Committee would continue to impress on the
22 agency the importance of maintaining safety, and that that needs
23 to be their priority, even when special interests -- auto
24 manufacturers, car dealers -- oppose improvements in safety.

25 Thank you.

26 CHAIRMAN PERATA: Thank you.

27 MR. HERNANDEZ: Good afternoon. Ignacio
28 Hernandez on behalf of the Consumer Federation of California.

1 Actually I had pretty much the same concerns that
2 Ms. Shahan has already addressed, so I'd like to leave my
3 comments at that.

4 But on behalf of a separate client, I'd like to
5 just raise an issue that I hope the Department will look at in
6 the future as it moves forward, and also the Director. That has
7 to do with some of the due process procedures in the DMV.

8 Currently, when an individual is -- has to go
9 before the DMV for an administrative per se hearing, either for
10 a drunk driving arrest or for a lapse-of-consciousness medical
11 suspension of his or her license, there is a hearing that is
12 set.

13 However, the Department has taken the position,
14 and in particular in the last few months has taken a much
15 stronger position, that any materials that the Department is
16 going to use against that individual, which is called discovery,
17 only has to be provided to that individual or his or her
18 attorney immediately before the hearing.

19 I have dealt with cases and talked with attorneys
20 who have received police reports, and other reports that are
21 going to be reviewed before a DMV hearing at 5:00 o'clock in the
22 afternoon when the hearing is at 9:00 a.m. the next morning,
23 which does not give an individual a reasonable amount of time to
24 prepare for the hearing and prepare to make their case as to why
25 their license should not be suspended.

26 The Department's response has been in a number of
27 cases that their only duty is to provide it before the hearing,
28 and there's no requirement as to how long before the hearing.

1 On the other side, if someone wants to present
2 some material in the hearing, they have to give notice 10 days
3 before the hearing. So, it seems to be an uneven playing
4 field.

5 Last piece of it is that in the last few months,
6 requests for continuances for this reason, that discovery has
7 been provided at the last minute, have been denied. And the
8 Departmental position has been, this is not good cause for a
9 continuance; they're meeting the letter of the law.

10 Certainly, I think that this is something that
11 when we're talking about access in a public agency, and these
12 hearings certainly are to determine whether someone should have
13 his or her license suspended, and until that decision is made,
14 they should be entitled to every opportunity to present their
15 views and to review all the material the Department's going to
16 be using against them. I believe this needs to be looked at.
17 Perhaps an equal 10-day window of providing the discovery should
18 be available.

19 But as this nominee goes forward, assuming she
20 does, I'd certainly like for the Department to look at this
21 issue, to see if there's some changes that can be made, and also
22 for the Legislature to take a look at this issue, if there's
23 some statutes that need to be changed.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 Anything further from opposition?

27 I want to say a couple things, because the
28 enormity of the task that this state faces with the federal

1 government's REAL ID Act is, I think, becoming really clear as
2 you speak.

3 [Thereupon some Senate staffers
4 brought in bowls of ice cream.]

5 SENATOR ASHBURN: Just trying to sweeten things
6 for this nominee.

7 [Laughter.]

8 CHAIRMAN PERATA: We'll try to get through this
9 real quickly.

10 First of all, I don't think it's wasted on
11 anybody that the backdrop of the Gulf disaster has made us all
12 review what we're looking at in our own areas of responsibility.
13 And one of the things that government does not do well at all is
14 plan. And the other thing it doesn't do is recognize what the
15 cost, the real cost of things, are. That's probably as much as
16 a function of politicians' unwillingness to give people bad
17 news.

18 But be that as it may, we are in a situation, it
19 seems to me, as the largest state in the Union, where cars to
20 Californians are like guns to Texans. I mean, there's probably
21 no single -- if you said, "Your car or your wife," most people
22 would have to pause, most men, excuse me.

23 [Laughter.]

24 CHAIRMAN PERATA Except in California.

25 So, it would appear to me that what we ought to
26 be doing on this particular issue, if not on others, is leading.
27 And we are really the dog that wags the tail, or we ought to
28 be.

You've identified a number of issues that, frankly, I don't believe should be subject of too many roundtable discussions on intermittently scheduled bases.

I would like to see brief papers flying out of the DMV that talk about the planning and the costs.

I believe this administration, and I don't care whose administration it is -- his, somebody else's -- we ought to be in front of this thing, because I will guarantee you, when the federal government fritters, you're going to get filleted, and so are the rest of us.

And nobody's going to want to hear, you know,
they haven't told us how to define the thing.

What the federal government has done in this rush to be secure is, done something that they have no idea of how to implement. Typical of large bureaucracies, typical of the federal government. We do the same to local governments. It's kind of like support. I try to.

And I also know that, you know, everybody's got an opinion about schools, sports and sex, because they've all participated at some level, even solitarily.

[Laughter.]

CHAIRMAN PERATA: But add cars to it, add driving. This is probably one of the most important departments in the State of California because it touches everybody's lives.

Now, we've talked about a lot of arcane things, but we've talk about something here that's going to make life miserable for everyone. And we're going to have to explain it to people, because the federal government hasn't said, "This is

1 what we're doing." They said, "This is what you're doing," what
2 we're doing.

3 The consequence and magnitude of that is
4 staggering. Just the idea that, guess what, 24 million of you
5 may have to find your birth certificates and come to class next
6 week is just -- how do you explain that to people? I don't want
7 to.

8 The other issue that comes to mind here is that
9 you are really -- not you but the agency -- the agency is at the
10 crucible of a number of things that are rapidly changing. An
11 aging population means that this ongoing issue over whether or
12 not elderly people should be driving, and under what conditions,
13 and how frequently should they be tested is going to become more
14 pronounced of an issue, not less.

15 The whole issue of privacy is something -- I
16 mean, I guess I don't read the right papers, but the idea that
17 you're selling vendor information, or the fact that we have
18 given you a law that allows you to do that is of some concern to
19 me. It's different if you want to get my subscription to the
20 New Yorker from some broker, intellectual. All right, Boys
21 Life, what the hell.

22 But it's something else again when the state
23 government should be willingly complicit in providing
24 information, anything, about what I'm doing. And if this is my
25 name and address, I don't care.

26 So, there are many things that have been brought
27 forward here. And it seems to me that if we were looking at a
28 flow chart, we'd have the federal government here, we'd have the

1 administration, your agency, and then your department.

2 But this is an area where I think I can say this
3 without any hesitancy, this is an administrative responsibility
4 that is borne by the chief executive of this state as a major
5 function of that office, regardless of whether it's a Democrat
6 or a Republican.

7 Having said that, I am very interested in
8 allowing and having a debate on these issues among all of the
9 constituents who are elected here statewide. Forty Members of
10 our Senate represent everybody in the State of California, for
11 better or for worse. And I believe that there is nothing that
12 we've done so far this year that touches so many people as
13 that.

14 So, it's going to be my recommendation that this
15 nomination be referred to the Floor so that a number of these
16 issues, and I know my colleague, Senator Cedillo, has been
17 taking the lead on the REAL ID Act, and Senator Bowen's done a
18 lot of work on privacy, but I know that the depth of their
19 understanding of these issues is simply a reflection of the
20 concern that we all have.

21 So, I believe this is of paramount importance,
22 and sorry in a way that this has come at the end of session,
23 because we could probably give it a lot more of the attention
24 it's due. But nonetheless, this is a major, major area of
25 responsibility.

26 And I will note, not happily, but this is also
27 the grist for the right wing mill. AM radio loves to talk about
28 immigrant driver's licenses as a way of obfuscating the real

1 issue. We weren't doing this about immigrants. We're doing
2 this about how we think we can protect ourselves.

3 And so, I want to see this given the
4 opportunity. And I don't want to use you as an object lesson,
5 but you volunteered for the job.

6 So, it would be my recommendation to the
7 Committee that we move this to the Floor tomorrow for a full
8 consideration by the Senate.

9 I'd like, if possible, to ask staff to recount
10 some of the things that Ms. Borucki responded in the exchange,
11 just outlining some of the areas. I don't know if it was five
12 or fifteen, but some of the areas of major concern you see just
13 with the REAL ID Act itself, and some of the privacy issues, so
14 that our colleagues could have that tomorrow.

15 Anything else? Senator Cedillo.

16 SENATOR CEDILLO: Just one last thing, because I
17 appreciate that there were twelve points that Ms. Borucki laid
18 out. If she could, give us the other six in writing so we can
19 have them.

20 The question, though, I think the fundamental
21 question that exists for us, at least for me, is this question
22 of, given all these issues, I don't doubt that you recognize you
23 have limits in terms of your legal authority to act. That you
24 can only act as the Legislature provides you to act.

25 There's many areas in which you can act if we
26 give you the authority without waiting for federal regulations.
27 There's a dozen areas.

28 I have a very -- and I was happy to hear you talk

1 about the impact on California if we don't comply.

2 I have just a profound concern, given your
3 answers today, given your written answers, how are we going to
4 comply with this in the short time period that's left?

5 The purchase of computers, the determination of
6 storing, ramp up, construction of an infrastructure, addressing
7 the points you laid out, how do we do this by May of '08? Plan
8 benchmark timetables, and you don't have authority yet to go
9 forward.

10 MS. BORUCKI: I don't have authority to
11 implement; that is correct.

12 And we're running as far as we can right now to
13 lay out our options. The project team reports directly to me.

14 SENATOR CEDILLO: Ms. Borucki, if I may, so, for
15 example, you tell me, well, I need 18 to 24 months to buy a
16 computer. You don't have authority to act. You can plan to
17 make a purchase. You've got to come to the Legislature to get
18 authority. You've got to come to the Legislature to get money.
19 The clock is running. You can't do that before, let's say, May
20 of '06.

21 And so, at best you've set a parameter. And at
22 best, you're barely going to make it to the deadline. And
23 that's assuming everything works. And that's just one purchase
24 in a department that doesn't have a history of doing this
25 successfully, and in a circumstance that you call, I don't know,
26 you said you had a code of spaghetti.

27 I mean, I'm just really concerned that we don't
28 have a greater sense of urgency. I don't understand why we

1 don't have a greater sense of urgency, given the backdrop of
2 what's taken place in the South, the tremendous need to be
3 prepared. I don't know how this gets done.

4 CHAIRMAN PERATA: Why don't you make this your
5 close.

6 MS. BORUCKI: We're working on it. I have
7 confidence in the people at DMV. They're very dedicated
8 people. They're smart. They understand DMV.

9 And I will do whatever I can do to get the
10 obstacles out of their way and to work with the control
11 agencies.

12 We know we have a deadline to meet. We know
13 that's going to be here faster than we think. And I think
14 they're up to the challenge. And I think we will do the best we
15 can to get there.

16 We recognize what's out there in front us as
17 well.

18 SENATOR ASHBURN: Comments, Mr. President.

19 I didn't want to get into further clarification,
20 but I'm looking at a letter that you signed on June 29th, that
21 is to Michael Chertoff, the Secretary of the Department of
22 Homeland Security.

23 Does this letter contain within it the points of
24 concern that require clarification from the federal government
25 with respect to the REAL ID Act?

26 MS. BORUCKI: Yes, sir. That contains our
27 biggest concerns.

28 SENATOR ASHBURN: So, with respect to

1 documentation of the urgency that the Department placed on the
2 questions raised by the REAL ID Act and the implementation,
3 clarification for purposes of implementation in California, on
4 June 29th, those were directed.

5 What effort has been made to follow up on the
6 written communication with the Department of Homeland Security?

7 MS. BORUCKI: We have actually been in phone
8 contact. We have a contact both within the Customs and
9 Immigration Services Division as well as one directly in
10 Secretary Chertoff's office that we harass on at least a weekly
11 basis to find out status, to express any additional concerns
12 that we may have.

13 We are also working with a number of other
14 states, including New York, Texas, Florida, to put together a
15 coalition of states to --

16 SENATOR ASHBURN: That was going to be my next
17 question. How formal is the that relationship with other
18 states, because the larger states, I'm sure, are going to be
19 facing the same issues?

20 MS. BORUCKI: That is very formalized through the
21 Association of Motor Vehicle Administrators, a national
22 organization. And it's a formalized committee that we've put
23 together that we actually have Washington, D.C. Offices through
24 that organization that we'll be using to do a lot of our
25 footwork.

26 SENATOR ASHBURN: Are you satisfied with the
27 speed with which you're being provided responses from the
28 Department of Homeland Security?

1 MS. BORUCKI: Not at all, Senator.

2 SENATOR ASHBURN: And what have you done to
3 communicate your dissatisfaction?

4 MS. BORUCKI: We've actually raised issues with
5 the legal counsel with the Department of Homeland Security. We
6 were concerned that until this state did contact them, that they
7 didn't feel a sense of urgency in responding either. And so,
8 we're not setting back to our haunches and waiting.

9 SENATOR ASHBURN: What was the response to the
10 June 29th letter?

11 MS. BORUCKI: There has been no response to date,
12 other than when we phoned them and asked them about progress,
13 status, what is happening. And most of it has been, well, we
14 intend to hold some meetings with the various state Departments
15 of Motor Vehicles sometime beginning in October.

16 CHAIRMAN PERATA: That doesn't surprise me.

17 SENATOR ASHBURN: Was there a follow-up letter
18 from you or from the Governor expressing dissatisfaction?

19 MS. BORUCKI: I have sent another follow-up
20 letter in August, and that pertained mainly to the requirement
21 to have a contract within a specific program for electronic
22 access.

23 And then we have, again, been in contact with
24 their legal counsel.

25 CHAIRMAN PERATA: With all due respect, this is a
26 political issue now.

27 What kind of political support have you gotten?
28 Have you conferred this to the administration?

1 I don't understand half of what you just said.
2 So, this is really about politics. And it's about, frankly,
3 somebody kicking somebody's ass.

4 MS. BORUCKI: We have asked the California Office
5 of Homeland Security, in their contacts within the Department of
6 Homeland Security, to also offer --

7 CHAIRMAN PERATA: They're not elected by anybody.
8 They don't have a constituency. They're a bureaucracy.

9 What have you done with the Governor's Office?

10 MS. BORUCKI: We have -- we need to go in and do
11 a full briefing with the Governor's Office, and that has not
12 happened yet, sir.

13 CHAIRMAN PERATA: Anything further, Senator?

14 SENATOR BOWEN: Just listening to this
15 conversation, I'm thinking about what happens when the League of
16 Cities, the California Association of Counties, any independent
17 cities association comes up here because they're concerned about
18 a bill that we passed that they think doesn't provide sufficient
19 guidance.

20 They don't show up with a list of questions.
21 They show up a particular set of recommendations for how they
22 think the issues should best be resolved in 90 percent of the
23 issues. There may be a few where they're basically saying, we
24 don't care how this gets resolved, as long as it does.

25 But I'm really concerned that what I'm hearing
26 is, we sent a list of questions, when what we ought to be
27 hearing is, it's in the best interests of Californians, and we
28 can be the most expedient, if the rules provide thus and such.

1 That's what the business community does before the Air Board,
2 the water board, every single agency.

3 They don't show up asking a series of questions.
4 They show up advocating. How come we're not advocating for
5 what's in the best interests of Californians.

6 CHAIRMAN PERATA: Senator Battin.

7 SENATOR BATTIN: With all due respect, it's
8 because terrorists threw planes into the World Trade Center that
9 the Congress acted. And it changed the dynamic of everything.

10 And frankly, the Congress is trying to get a
11 handle on making sure that terrorists do not enter our country,
12 get a legal driver's license, and do it again.

13 So, in their real zeal to make our country safe,
14 they have passed a law. Now, every state -- and it's not just
15 California -- every state is facing this.

16 It's unfair to say to our nominee, why aren't you
17 telling the federal government what they're supposed to do?
18 Because frankly, I don't think that the federal government has
19 quite figured it out yet. They're going to decide, and they're
20 going to go through their own rule making process to figure out
21 the best way to do it, and they're going to make a decision, and
22 they're going to work with us.

23 And they're certainly going to want California's
24 input. We're the largest state in the country. We have more
25 drivers per capita, I think, than anywhere. And of course
26 anything they do is going to affect us.

27 But it's given our nominee just an impossible
28 position to say, well, how come you haven't told the federal

1 government what they're supposed to do, and how come they
2 haven't listened to you?

3 She's trying to figure out what the ground rules
4 are. And I'm sure that she will lead the Department to adopt
5 those rules, and to get it done correctly when she has the
6 information.

7 And I applaud her for her continual questioning
8 of Homeland Security, saying how are you going to review this,
9 what are going to be your guidelines.

10 They've got a lot of work they've got to do. It
11 is our job to make sure that we keep the pressure up on them as
12 a government, and it is her job to make sure that they implement
13 it to follow the federal law.

14 It's not fair to her to create such a hill to
15 climb that it's impossible for any human being to get over it.
16 And I think we've got to focus on that. The dynamic is not just
17 the typical, this is what the federal government did; isn't it
18 complicated for the states?

19 It's the government acted to protect its citizens
20 because 3,000 Americans were murdered, and they're going to do
21 something that they can to try to stop that. And now we're
22 going to be dealing with it the best way that we can. We can't
23 lose sight of what it is and the reason behind the REAL ID Act.

24 I just think that we owe that to her, to make
25 sure that we keep it, at least her confirmation process, fair.

26 CHAIRMAN PERATA: We'll just conclude with this.
27 I will bet you anything that when all this starts busting loose,
28 Members of the Senate are going to get blamed far more for

1 what's going on with DMV than any Congressman from the State of
2 California.

3 With that, we have a motion to move with no
4 recommendation to the Floor.

5 Call the roll, please.

6 SECRETARY WEBB: Ashburn. Bowen.

7 SENATOR BOWEN: Aye.

8 SECRETARY WEBB: Bowen Aye. Cedillo.

9 SENATOR CEDILLO: Aye.

10 SECRETARY WEBB: Cedillo Aye. Battin.

11 SENATOR BATTIN: Aye.

12 SECRETARY WEBB: Battin Aye. Perata.

13 CHAIRMAN PERATA: Aye.

14 SECRETARY WEBB: Perata Aye. Four to zero.

15 SENATOR ASHBURN: Ashburn Aye.

16 SECRETARY WEBB: Ashburn Aye. Five to zero.

17 CHAIRMAN PERATA: Thank you.

18 MS. BORUCKI: Thank you.

19 CHAIRMAN PERATA: Senator Pacheco -- Senator. I
20 just condemned you, sorry.

21 Senator Battin planned to introduce you, but he's
22 got ice cream now.

23 SENATOR BATTIN: Thank you, Mr. Chairman,
24 Members.

25 You know, it's a great honor to be able to
26 introduce my friend, Bob Pacheco, and I think that probably
27 anyone that served with him, and I think we all have, can say
28 the same thing. He' our friend. We know him as a capable and

1 very even-tempered lawmaker, and now he's going to be working in
2 the administration.

3 We could go on and on about him, but I'm not
4 going to. I just would immediately move his nomination. And
5 I'm glad you're still serving in our state government.

6 CHAIRMAN PERATA: And Assemblyman, you were here
7 last week, I believe, when we went through in a rather detailed
8 manner, and she came back. So, I think you can be very brief.

9 We all know your work. I think this is a
10 wonderful appointment, and I'm really pleased that you're
11 willing to do it.

12 MR. PACHECO: Thank you very much.

13 I appreciate --

14 SENATOR CEDILLO: Mr. President.

15 CHAIRMAN PERATA: Mr. Cedillo.

16 SENATOR CEDILLO: Just so that record can
17 reflect, I had the privilege of serving with Mr. Pacheco. I
18 just want to echo the comments.

19 We may not agree on certain policy matters, but
20 extremely honorable man, and extremely competent and reflective
21 of the type of appointments that we would like to see.

22 CHAIRMAN PERATA: You know what they say? Thank
23 you.

24 MR. PACHECO: Thank you, Mr. Cedillo, and thank
25 you, Mr. Battin.

26 Senator Battin, Senator Cedillo, and
27 Mr. President, thank you for allowing me to be here.

28 If I could take a few moments, I know I'd like to

1 introduce, if I could briefly, my wife Gail is in the room.
2 She's my right arm and always with me on everything I do. So, I
3 want to make sure she's introduced.

4 Also in support with me today is, of course,
5 Candice Traeger that the Committee talked to last week. She's
6 doing a wonderful job with the Appeals Board.

7 Manuel Mongosa is also here. He's the
8 northern -- he's the Presiding Judge for the ALJs in Northern
9 California.

10 I think Mary Cole is here. She's the Executive
11 Secretary. Kind of shy. She likes ice cream, though.

12 And Leon Medino is here. He is the new member
13 that just joined our Appeals Board. We're very happy to have
14 him.

15 I want to tell you just briefly that this is kind
16 of an interesting full circle for me. Coming from being a
17 student of the law, then going to the practice of law and
18 applying the law, then going to the Legislature to create the
19 law, and now back into a position where I'll basically be
20 interpreting the law and applying it as the Legislature has seen
21 fit to pass, is a full circle for me. It's very interesting,
22 and I don't think too many people get an opportunity to see the
23 law in the full circle, in the way that I will be.

24 And I think you know my history. I believe as a
25 public member of the OSHA Appeals Board, I'll bring a lot of
26 broad experience.

27 And many people don't know my history and
28 background, but those that may be listening know that I've been

1 working for a long time. So, I bring the history of work as a
2 farmworker. I bring history of working in the retail industry,
3 18 years as a retail clerk, working in banking, working as an
4 attorney, then a Legislator, business owner. So I'm very keen
5 and interested in all the issues that Cal-OSHA is concerned
6 with. That is the safety of workers in California, and the fair
7 application of the laws, and making sure that not only the
8 workers but the businesses are well protected, and so on.

9 Looking very much forward to being here, to being
10 confirmed with your approval, of course. And I thank all of
11 you. I've served with Mr. Ashburn. We sat together.

12 Ms. Bowen and I have been good acquaintances.
13 She's appeared in a number of the committees that I was in, and
14 we had many good exchanges.

15 I thank you all for the consideration you've
16 given me. I appreciate it very much.

17 CHAIRMAN PERATA: It's our pleasure.

18 Anyone here that would like to feel compelled to
19 say something? I'm not going to let anybody say anything
20 negatively.

21 We have a motion by Senator Battin to approve.
22 Call the roll, please.

23 SECRETARY WEBB: Ashburn.

24 SENATOR ASHBURN: Aye.

25 SECRETARY WEBB: Ashburn Aye. Bowen.

26 SENATOR BOWEN: Aye.

27 SECRETARY WEBB: Bowen Aye. Cedillo. Battin.

28 SENATOR BATTIN: Aye.

1 SECRETARY WEBB: Battin Aye. Perata.

2 CHAIRMAN PERATA: Aye.

3 SECRETARY WEBB: Perata Aye. Four to zero.

4 CHAIRMAN PERATA: I'm going to leave it open.

5 There he is.

6 SECRETARY WEBB: Cedillo.

7 SENATOR CEDILLO: Cedillo Aye.

8 SECRETARY WEBB: Cedillo Aye. Five to zero.

9 MR. PACHECO: Thank you very much. I appreciate
10 it.

11 CHAIRMAN PERATA: Next, Joseph Miller, Workers'
12 Comp Appeals Board.

13 Mr. Miller, welcome.

14 MR. MILLER: Thank you. I wish I had Senator
15 Pacheco's eloquence.

16 Good afternoon to all of you. No ice cream here
17 in front of me.

18 CHAIRMAN PERATA: Let's see how you do.

19 [Laughter.]

20 MR. MILLER: I am Joe Miller. I'm here this
21 afternoon because the Governor nominated me as Commissioner and
22 Chairman of the Workers' Compensation Appeals Board. I'll try
23 to make this very brief, because I think all or most of you have
24 my resume and my goals, and so forth.

25 I would have the my wife here this afternoon, but
26 she's in Boston with her 88-year-old mother right now. I came
27 back yesterday for the hearing. I'm going back tonight. So,
28 this is a very quick visit, I'm afraid.

1 My daughter, my younger daughter just had a baby.
2 She's got a two-and-a-half month old son that she's tending to,
3 so she begged off this afternoon. And my other daughter is
4 working for the Office of the President of the University of
5 California, trying to straighten out the budget system over
6 there. So, she felt she better stay over there in Oakland and
7 push papers around.

8 But they're very supportive of me, and for them,
9 I thank them very much.

10 I've been a workers' comp lawyer virtually all of
11 my professional life. I think that my life as a lawyer has
12 prepared me about as well as it's possible to be prepared for
13 the position that I've been appointed to.

14 I'm very thrilled to be in this position. For
15 about a third of my professional life, I represented labor
16 unions and working people; for about two-thirds, I've
17 represented large employers and a few insurance companies.

18 I like to think that neither side has a patent on
19 Social justice or the way.

20 For the last three years, since I left my firm,
21 I've been doing a lot of mediation. I did the training through
22 the Superior Court in Pepperdine. I then did the training here
23 at the Court of Appeal, and I've conducted a number of
24 mediations. I'm a very big believer in alternative dispute
25 resolution, and in trying to find alternative ways of getting
26 litigation closed down.

27 I like to think that I'm a centrist when it comes
28 to workers' compensation, and I think that whole concept has

1 informed my entire professional life.

2 Having said all of that, and hopefully not having
3 put any of you to sleep, I'm happy to answer any questions you
4 might have.

5 SENATOR BOWEN: How about mediating the REAL ID
6 Act discussion?

7 [Laughter.]

8 MR. MILLER: Was there a question in there?

9 CHAIRMAN PERATA: Frustration.

10 We've had a lot of what we have we called reforms
11 for workers' comp over the last three years.

12 What do you think has the most significant effect
13 on the work that the Board does or will be doing?

14 MR. MILLER: Well, we certainly have had a number
15 of reforms. I'm clear that the current reform, the one that
16 passed last year, is by far the most comprehensive reform. It
17 makes the workers' compensation law look more different than it
18 ever has before.

19 I purposefully did not use just the term
20 "different."

21 It's a challenge to all of us who are working in
22 the field, and many of the affects of it, we don't know yet.
23 They're starting to percolate up through the system.

24 The hope is that to the extent that the system
25 may have been broken, that this legislation will help to fix
26 it. It's going to take the cooperation of everybody involved in
27 the field, I think.

28 I'm not sure that answers, but fire away if it

1 didn't.

2 CHAIRMAN PERATA: We've had a substantial amount
3 of discussion pre and post passage of the law, talking about the
4 interim guidelines, medical guidelines, or guidelines for
5 medical treatment.

6 Do you have any taste of what you've seen so far?
7 You're grinning. You must have some taste. How are you seeing
8 things?

9 MR. MILLER: We're certainly seeing cases coming
10 up with issues under the so-called utilization and review, and
11 the application of the so-called ACOM guidelines.

12 I think the use of the ACOM guidelines was a very
13 serious attempt on the framers of the legislation to lend some
14 certainty to what we're dealing with, and to bring down medical
15 costs that had very much gotten out of hand. And I think that's
16 a good thing. To get control of anything that's out of control
17 has got to be a desirable thing.

18 I think there is some problems on the application
19 of the ACOM guidelines. I think they need to be tinkered with.
20 And I think that the Administrative Director, Andrea Hoch, is
21 working very hard to put together a system that will be a
22 comprehensive system that does work.

23 So, I think it's -- I think where we are now is a
24 partial way towards where we want to be.

25 CHAIRMAN PERATA: Other questions. Senator
26 Bowen.

27 SENATOR BOWEN: Just one.

28 SB 228 established some interim guidelines for

1 medical treatment. And I have heard anecdotally that insurers
2 have interpreted silence on a particular type of treatment in
3 that bill as meaning that it was not intended to be covered.

4 What are you seeing, if anything, in terms of
5 patterns in that regard?

6 MR. MILLER: Anecdotally, we're seeing some
7 insurance companies, at least, arbitrarily refuse certain kinds
8 of medical treatment as not being appropriate for the kind of
9 condition that they're dealing with.

10 I think that a significant part of the litigation
11 right now has to do with whether a kind of medical treatment, a
12 kind of drug, a kind of procedure, is appropriate for a
13 condition.

14 I'm not sure, very frankly, that the litigation
15 system that we have in Workers' Compensation is the best way to
16 deal with those things.

17 SENATOR BOWEN: That was going to be my next
18 question. If you're seeing concern over that kind of decision,
19 what treatment should be covered for a particular thing, is
20 there a more efficient, cost effective, timely way to deal with
21 things, or more global ways so that particular individuals don't
22 find themselves in a six or eight month limbo, waiting to have a
23 decision, even, on whether something's going to be approved or
24 not?

25 MR. MILLER: I think it's a terrific question. I
26 think that there may be an administrative way to deal with it in
27 an expeditious and fair way, because I think fairness is a key
28 part of it. And I'll give you an example, not having to do with

1 that exact scenario.

2 We've got a couple of cases where a doctor in
3 Southern California, a very good doctor, and a first-rate,
4 state-of-the-art doctor, is recommending that a two-level disc
5 replacement be done. And this means replacing discs that are a
6 natural part of the body with artificial devices.

7 Well, the manufacturer of these devices
8 recommends in its literature that only one of these be done.

9 So, on the one hand you have this good surgeon
10 saying, "Put two of them in." On the other hand, you have the
11 manufacturer of the device saying, "Put one of them in."

12 That's a terrible place to put folks, whether
13 they're workers' comp judges, or they're members of my board, to
14 put them into that kind of decision making position.

15 I think there's a better way to do it. I can't
16 tell you exactly what it is, but my sense is there's a better
17 way to do it.

18 SENATOR BOWEN: Good. Looking forward to hearing
19 what we come up with.

20 CHAIRMAN PERATA: Anything further?

21 Anyone here in support of the nominee? In
22 opposition?

23 Seeing none, I would just like to thank you for
24 accepting the position. Congratulate the Governor on putting
25 somebody with your broad experience in that job.

26 And with that, I would ask do we have a motion to
27 approve?

28 SENATOR BATTIN: Motion to approve.

1 CHAIRMAN PERATA: Please call the roll.

2 MR. MILLER: Thank you very much.

3 SECRETARY WEBB: Bowen.

4 SENATOR BOWEN: Aye.

5 SECRETARY WEBB: Bowen Aye. Cedillo.

6 SENATOR CEDILLO: Aye.

7 SECRETARY WEBB: Cedillo Aye. Battin.

8 SENATOR BATTIN: Aye.

9 SECRETARY WEBB: Battin Aye. Perata.

10 CHAIRMAN PERATA: Aye.

11 SECRETARY WEBB: Perata Aye. Four to zero.

12 CHAIRMAN PERATA: Congratulations.

13 Our final appointee appearing today is Bonny
14 Herman, Member of the California Regional Water Quality Control
15 Board, Los Angeles Region.

16 Welcome.

17 MS. HERMAN: Thank you. Won't you please have
18 some more ice cream?

19 [Laughter.]

20 CHAIRMAN PERATA: Go ahead, please.

21 MS. HERMAN: Thank you very much. Thank you all
22 very much for the opportunity for me to meet with you today and
23 to talk about my appointment.

24 I am expecting Senator Richard Alarcon --

25 CHAIRMAN PERATA: Would you accept a former
26 Congressman? He's not as good.

27 MS. HERMAN: Absolutely.

28 CHAIRMAN PERATA: But he's here.

1 I'll introduce Bonny.

2 MR. LEHMAN: I'm just here on behalf of the City
3 of Downey that's very supportive of Ms. Herman for this job.

4 CHAIRMAN PERATA: Introduce yourself.

5 Richard Lehman. I'm a lobbyist with Lehman,
6 English Kelly and O'Keefe.

7 We are very supportive of her nomination. She's,
8 we think, done a very good job on the Board during the time that
9 she has worked there, been very level-headed in her decisions,
10 has tried to balance a lot of very difficult things in that
11 area.

12 And we are -- she's highly qualified, and we're
13 very supportive.

14 CHAIRMAN PERATA: Congressman Lehman is being
15 modest. He was also in Washington before they were protecting
16 us from the terrorists, and also served in this house.

17 MR. LEHMAN: That was a long time ago.

18 CHAIRMAN PERATA: Thank you for being here.

19 MS. HERMAN: Thank you, Congressman.

20 CHAIRMAN PERATA: Here's Senator Alarcon.

21 SENATOR ALARCON: I apologize. It's one of those
22 days, Mr. Chair, Members.

23 It's my pleasure to be here today to introduce
24 you to Bonny Herman, who's been a long-time friend of mine in
25 the San Fernando Valley, dating back to 1988, when we were
26 members of the San Fernando Valley Leadership Institute, which
27 we then reformulated under the Valley Leadership Institute. So,
28 I have worked with her in partnership ways on many, many

1 subjects.

2 We did the Truth in Bonding Measure together as
3 VICA, a bipartisan effort to improve the quality of information
4 that gets to the voters when voting on bond measures.

5 In this particular case, I just want to say
6 this. Bonny and I don't always agree. And as a stern business
7 advocate, I can tell you she does a good job.

8 But I also want to tell you that she plays fair.
9 And while we may not agree on all issues, I can tell you that
10 she represents truly the fact that Democrats, too, can be great
11 business advocates. The vast majority of her members are not
12 Democrats, and yet she represents the interests of the business
13 community.

14 I think she has -- I understand many of the
15 environmental friends have taken a position against this
16 particular appointment.

17 But given the scheme of things, given the fact
18 that we have given great latitude to the Governor in his
19 appointments, as is the tradition of this institution, I believe
20 that this is an appointment that is not only going to be good
21 for California, it may not represent 100 percent of the
22 decisions that I might make, but I know that in the whole, on
23 balance, that Bonny Herman will be a good Commissioner for the
24 State of California, and be open, and will, as we did with the
25 Valley Leadership Institute, where we brought people of all
26 persuasions together, she will be someone to unify us around
27 issues and, hopefully, move forward with an environmental
28 agenda, an advocacy agenda, that improve the quality of life for

1 all Californians.

2 And so, I'm here to support my friend and urge
3 your support.

4 MS. HERMAN: Thank you.

5 SENATOR BATTIN: Thank you, Senator.

6 You were kind of introducing your introducers, so
7 you haven't had a chance to introduce yourself and make an
8 opening statement.

9 MS. HERMAN: Thank you.

10 I would like to say, first of all, that I
11 accepted this nomination to the Board because I am committed
12 safe water and for this Board and the State of California to
13 reach all attainments and to comply with all the laws of this
14 land.

15 But let me take a minute to give you a snapshot
16 of who I am and some personal history. As the Senator
17 mentioned, I'm President and CEO of the nonprofit, nonpartisan
18 business advocacy association known as VICA, for the Valley
19 Industry and Commerce Association, based in the San Fernando
20 Valley of northeastern Los Angeles. I've held this position
21 since 1986.

22 He did mention I am a registered Democrat and was
23 actually Vice President of the Young Dems of Miami, and was very
24 active when I lived there.

25 I graduated from the University of South Florida
26 in Tampa and taught elementary school for a few years, and then
27 went on to Junior Achievement, who brought me to Los Angeles in
28 1979 to start up their education program for eighth and ninth

1 graders. I then was hired to run the Century City Chamber of
2 Commerce, also a nonprofit, and ran that for three years.

3 I also started a business called Balconies
4 Beautiful, a company dedicated to small spaces and low water use
5 plants.

6 In my free time, I'm a horse enthusiast and
7 compete in shows as well as trail ride every weekend.

8 By the way, I owned a small horse property in
9 Agua Dulce, California, and I had a well that ran out of water
10 every now and then. And it wasn't fun going to work without a
11 shower. I do know how precious this resource is, and found out
12 that my horses drank up to 13 gallons a day.

13 I enjoy outdoor and travel photography, and my
14 work is at a local gallery. It hasn't sold, but I'm hopeful.

15 Which reminds me, and should remind you, of how
16 important I think the environment is, because I certainly enjoy
17 it and recognize how precious that resource is, as a horseback
18 rider who's constantly worried about, you know, how many trails
19 and how long they're going to last.

20 But besides these civic boards, I've served on
21 the most important board as a representative of the City of Los
22 Angeles on MWD from 1995 to 2004, an experience that prepared me
23 well for this assignment. I learned a great deal about water
24 availability, quality, and affordability.

25 While working for VICA, I've served on numerous
26 nonprofit association boards, including many hospitals. I
27 recently resigned from two of those to serve on the Regional
28 Water Board, knowing its unusual requirements for considerable

1 reading material and long, long board meetings. My organization
2 has always been willing to allow me to leave time to serve,
3 learn, and make a meaningful contribution to the state and to
4 the environment.

5 In support and in light of today's conversations,
6 you should know that VICA's foremost a nonprofit and nonpartisan
7 organization. My job is about its proper administration, not
8 being -- not taking positions on business issues. That's our
9 membership's role. In fact, I don't even vote for our members'
10 bylaws.

11 My goals on this Board, as I stated in the
12 response to Senator Perata's questionnaire, July 6th, is related
13 to my day-to-day experience of balancing business concerns with
14 federal and state mandated regulations, while meeting and
15 complying with existing law.

16 I'm bringing that point of view to this Board to
17 bring forth better information for more informed decision making
18 that will result in quicker water quality improvements rather
19 than later.

20 I was not aware that there was a problem before
21 this Committee until last week, when I received a phone call
22 from the Rules office. Prior to that, had I known about it, I
23 certainly would have met with the groups that are -- have
24 concerns about my position on this Board. Other groups have
25 sought me out, and I have met with them. So, I was kind of
26 surprised when I received this invitation to be before you
27 today.

28 I do prepare for these meetings. I take copious

1 notes. I think I've run out of all the Post Its that are
2 available to me in my house and in my office. And I listen
3 carefully to the staff's presentations while following along
4 their Power Point printouts at my seat.

5 I also listen with great interest to all the
6 public speakers. In fact, I brought the notes I took at last
7 Thursday's meeting, as they were over three hours, maybe five
8 hours' worth of speakers, and I wanted to be sure I caught each
9 of their concerns for the question period that followed. And
10 all the Board members are allowed to ask questions, as you do
11 here. And we certainly -- I think each of us had at least four
12 our five just on that hearing.

13 I'm not predisposed to a particular decision on
14 the serious water quality matters, but recognize that -- what
15 the bottom line is, and that's to meet the laws and to comply
16 with them.

17 My comments and questions really have to do with
18 how the standards can truly be met. When I listened to all the
19 testimony, especially of the municipalities, the cities and the
20 counties, and their concerns about how they're going to meet
21 those, it really strikes a chord in my mind and my heart, being
22 very concerned how they are going to meet the deadlines, and
23 where they're going to get the money from.

24 If they can't meet the standards, whether they're
25 numeric or BMPs due to a lack of technological know-how or
26 fiscal limitations, then the Board has to fine those entities.
27 And they may, in return, sue the Board. And then the state uses
28 its lawyers to defend the Board.

1 So, this is a very costly and long, drawn out
2 process that postpones the very thing we're here to achieve,
3 water quality improvements. So, that's really why I asked
4 financial questions.

5 Early on in this assignment at the January Board
6 meeting, I asked the City Manager of Malibu a series of
7 questions to understand how they were going to find the funds
8 for their wastewater treatment plan, given the high cost of real
9 estate and shortage of locations in Malibu. The answer was some
10 cobbled plan of bond and grant money that left me wondering how
11 this treatment facility would really come about and in what
12 decade.

13 From the questionnaire posed to me from the
14 Senate Rules Committee a few months ago with respect to numeric
15 standards and BMP, I gathered because that question was asked
16 twice, this has been a difficult decision for members of all the
17 regional boards. Perhaps this is a matter to be reopened with
18 members statewide of all these boards, including technical
19 experts, staff, environmental groups, and all other
20 stakeholders, to work together to find remedies, again, rather
21 than going through the courts.

22 I would include the findings of the recent Wet
23 Weather Stakeholders Workshop that was created as a result of
24 two of the Board meetings in Los Angeles, and consider their
25 comments and concerns. This group was requested by our Board to
26 meet with the staff right after the December-January storms
27 caused considerable implications to communities trying to meet
28 the standards.

1 One thought is to have an exception process, a
2 reopen, or escape clauses when catastrophic weather conditions
3 make it impossible for compliance. Local El Ninos' impacts
4 should be taken into the broadest context for measurement
5 standards, otherwise, all downstream communities will be out of
6 compliance until and if nature re-balances itself. We should be
7 able to predict that there will be extraordinary weather
8 conditions and adjust the measurements and timeframes for the
9 regulated communities after each incident, and then use man-made
10 tools to expedite compliance when reasonable to do so. This
11 seems a more logical course in the round of inevitable lawsuits.

12 One final point, and that was also recently made
13 about my presence on the Board, and my -- the potential that my
14 No votes are going to tip the balance and cause a loss of this
15 Board's ability to issue permits. That's just pure nonsense.
16 There's no way that that could happen.

17 And I just would invite the signatures of the
18 letter, the people that I really don't even know, that haven't
19 even introduced themselves to me, to meet with me, if I do get
20 nominated, to talk about the differences, and so they understand
21 my point of view.

22 I have my own particular style. There's no doubt
23 about that. And perhaps I could have prefaced some of my
24 remarks and given more explanation as to my reasons on some of
25 my No votes.

26 I thought I was more clear, but apparently I
27 wasn't. So, I welcome the opportunity to meet with the
28 representatives of the groups that are having issues with the

1 way that I have presented myself in the votes that I have
2 taken.

3 I just thank you for the time today, for having
4 an opportunity to have a dialogue with you.

5 SENATOR BATTIN: Thank you.

6 Do any of our Members have questions? Senator
7 Bowen.

8 SENATOR BOWEN: Thank you.

9 I actually don't think I've ever seen a letter
10 from Heal the Bay, Baykeeper, and NRDC in opposition to a Board
11 nominee before, so I read it carefully. I have some questions
12 that I had, and then a few about the things that are set forth
13 in the letter.

14 One of the things -- you have a copy of the
15 letter?

16 MS. BORUCKI: I think I have it back in my
17 briefcase, but I think I know where you're going.

18 SENATOR BOWEN: There's a quote from something
19 that you said about the EPA deadlines. Basically:

20 "I'm not intimidated by the EPA
21 deadlines. Deadlines are
22 artificial, you know, so deadlines
23 can be changed. They're just
24 artificial lines in the sand."

25 While that's true to some extent, we just had a
26 big discussion about deadlines for compliance with the REAL ID
27 Act, and compliance.

28 And I'm very concerned with what this says about

1 your basic attitude towards compliance and the importance of the
2 standards and the deadlines that are set out.

3 Can you shed some light on the context in which
4 this was said?

5 MS. HERMAN: The representative from EPA came
6 down to our meeting and addressed the Board, and basically said
7 in no uncertain terms, if you don't pass this TMDL today, that,
8 you know, this Board will be -- we'll take care of it for you by
9 the end of the year. I thought -- that's a very Bonny
10 paraphrase.

11 But I thought that was very, very interesting.
12 And interesting from the point of view, I know we can't tackle
13 the Clean Water Act and go back and do anything to change that,
14 but I was thinking about other ways that we can get to
15 compliance.

16 And maybe I shouldn't have used that particular
17 EPA as an example, but there were perhaps language in the TMDLs
18 that were coming down that we could adjust to help the regulated
19 community meets these deadlines. That's really what I was
20 saying.

21 SENATOR BOWEN: Do you think we should go back
22 and change the Clean Water Act?

23 MS. HERMAN: I don't have enough information.
24 I'm struggling with what I hear when the public comes up and
25 talk about their concerns of how they're going to meet these
26 deadlines.

27 Everybody's concerned about clean water. We all
28 want clean water. That, to me, is a given.

1 And maybe I should have said more as I began my
2 comments. I'm certainly not anti-clean water.

3 The question is how to get there, and how to get
4 there sooner than later, because the longer these lawsuits go
5 on, it keeps the communities from figuring out and getting
6 started building the necessary plants and implementing the
7 technology to comply.

8 SENATOR BOWEN: In your answers to the questions
9 that were asked, you stated that one of the ways to get to
10 compliance, this was Question 15, was to pass the TMDL
11 standards. And I assume that when you talk about avoiding
12 litigation, you're getting these kinds of thing done.

13 This was written on June 2nd, but then I'm told
14 that you were the only vote against the TMDL standards.

15 Can you explain?

16 MS. HERMAN: Yeah. I was making a point about,
17 again, concerns about at the previous speakers, all the -- the
18 parade of organizations that had come before us, not just that
19 day, but from the first time I attended a meeting in December.

20 And it concerned me that I wasn't hearing enough
21 answers from staff that these organizations were going to be
22 able to comply, and thought, well, then we're going to start
23 that whole round of fines, and out of compliance again, and
24 lawsuits, and so on. It seemed like this organization, the
25 Board, had an awful lot of closed sessions and an awful lot of
26 litigation.

27 And I was trying to look at the bigger picture --
28 maybe that wasn't the place to do it -- to figure out how do we

1 really get to compliance. And I didn't say that at all in my
2 speech of when I said, you know, I was voting No.

3 It wasn't about the Board not voting. Whatever
4 many, how many people there were that day, it was 7-1 or 6-1, or
5 whatever. I didn't think that my vote was going to change the
6 outcome at all.

7 It was an expression of let's pay more attention
8 to how these organizations are going to meet the deadlines and
9 the compliance, and at what cost.

10 SENATOR BOWEN: You referenced there being a lot
11 of litigation and a lot of closed sessions to discuss it, but in
12 April of this year, the Office of the Secretary of Cal EPA
13 reported to this Legislature that the State and Regional Water
14 Boards are among the worst agencies in the state in enforcing
15 the law. That they're slow to enforce clean water laws, almost
16 never seek criminal penalties for serious violations, and
17 generally do not aggressively pursue violators.

18 How do you reconcile that report from the
19 Secretary of Cal EPA with your view that you are taking -- what
20 I heard was that you think you're taking too much regulatory
21 action, too many, quote, "rounds of fines", and so forth.

22 MS. HERMAN: It's a disturbing problem. I'm
23 finding in these meetings, listening, that it does go round and
24 round in circles.

25 But this L.A. Region, from what I'm learning, has
26 really set the pace for completing more TMDLs than the rest of
27 the state. And the staff has been aggressive as they've been
28 able to be with the limited staff that they do have in getting

1 to these various nutrients, or chemicals, and things that are in
2 the storm water.

3 And so, in spite of all, that I think the L.A.
4 Region has done a very, very good job. And my one vote, sole
5 vote of No hasn't slowed them down at all.

6 SENATOR BOWEN: Actually, it's my understanding
7 that you were also the only Board member to oppose the Triennial
8 Review to set Basin Plan priorities.

9 MS. HERMAN: That came about right after the
10 storm water issue that I referenced in my opening remarks.
11 There was a lot of concern by the regulated community, and they
12 showed up in droves in January and February, after the
13 December-January rains, and were very concerned about
14 compliance.

15 And I thought that should be an important piece
16 of the Triennial. And I don't recall it being addressed in
17 there. It could be the fact that I'm new on the Board and
18 didn't know all the elements of the Triennial Review. But I
19 thought it was really important that that be included in that,
20 because weather is, as we know, very uncertain. We should have
21 some way to adjust to these conditions. And there should be
22 probably exceptions.

23 I think I said in my response to the Senator,
24 when I was asked about numerics and BMPs, that I sort of agreed
25 that you can quantify and use numerics, but there needs to be an
26 escape clause in extraordinary events. And that wasn't
27 addressed at the Triennial, to my knowledge. And so, that was
28 why there was a No vote.

1 SENATOR BOWEN: I'm very concerned about the
2 position that there should be an escape clause. That's the kind
3 of thing that's gotten us enormous sewage spills.

4 I look at the situation in Louisiana and
5 Mississippi right now, where people knew that there were going
6 to be certain kinds of incidents and were unable to plan for
7 them.

8 We know that we're going to overwhelm the storm
9 drain system during some time periods, and that it's going to
10 result in sewage spills. We've known that historically. L.A.
11 has made some progress.

12 But if you continue to have an escape clause,
13 you're never going to get to a situation in which you don't have
14 those kinds of incidents?

15 MS. HERMAN: But I don't think -- what I'm saying
16 is, I think you need to have the hard-and-fast, but when
17 there're extraordinary circumstances, and I don't know what body
18 would declare the emergency to allow the communities to have a
19 certain amount of time to get into compliance. It's not wide
20 open. It says, whenever you get around to it.

21 SENATOR BOWEN: Well, we do have EPA deadlines;
22 right?

23 MS. HERMAN: Yeah, but I'm talking about
24 extraordinary conditions, and why I voted No on the Triennial.

25 SENATOR BOWEN: I'm also told that you were the
26 only Board member to oppose the plan to reduce hydro
27 modifications?

28 MS. HERMAN: Again, the same kind of reasons.

1 SENATOR BOWEN: And the TMDLs for metals and
2 toxics in Ballona Creek?

3 MS. HERMAN: Un-huh.

4 And the reason is, when I listened to all this
5 testimony, and I'm not sure or convinced that I've been
6 satisfied to go along, because the culture of that Board is to
7 go along, I don't think I'm doing a service to my constituency.
8 I'm there to --

9 SENATOR BOWEN: Who do you consider your
10 constituency?

11 MS. HERMAN: Well, I'm the county rep, so it's
12 the entire County of Los Angeles.

13 And these -- the costs, the implementations, the
14 timelines, and so on, greatly impact the cities, counties,
15 everybody's ability to afford the infrastructure to get to the
16 cure.

17 SENATOR BOWEN: What about the people who use the
18 water, the tourists, the people who live along the L.A. River.
19 Are those part of your constituency?

20 MS. HERMAN: Absolutely.

21 SENATOR BOWEN: Because I don't hear any concern
22 for them. All I'm hearing is cost. I'm not hearing anything
23 about --

24 MS. HERMAN: But they're also going to pay the
25 bill. Those that are homeowners will pick up the tab for bond
26 measures that the cities and counties have to raise the money
27 through. So, they also, while they're very, very -- we're all
28 users of recreational facilities, we all have to pay for it.

1 But I want to make sure, and this coming up in a
2 situation that we have right now with Las Virgins in Tapia, that
3 the cost of the cure, number one, takes care of the problem, and
4 we're not going to go back again, tear down a plant and rebuild
5 another one because we find out later that that wasn't exactly
6 the right answer. And this is what's come up last week, over
7 and over again.

8 So, there's going to be a lot -- the hearing was
9 held over. And I would say, like I said earlier, probably 25-30
10 questions from the board, not just me. We're all seeking
11 information to try to ascertain, where is the real remedy here,
12 that this community has to spend \$100-150 million to deal with
13 one issue, the nitrogen, and all the storm water that's coming
14 down that they are receiving. And it turns out that that's not
15 the right answer, and they have to start over again with another
16 kind of facility, and so on and so forth. I think somebody's
17 got to ask those questions.

18 SENATOR BOWEN: You know, when I read your
19 letter, I was really struck by one thing. It's something I've
20 never seen before, which is virtually every answer that you have
21 starts with, "According to staff," or "I am advised that staff
22 has identified," or "Staff is working on this."

23 I can't tell in your answers anything about your
24 views or positions on this. I'm sort of hard-pressed to even
25 know to ask you what you think, because your answers all refer
26 to staff.

27 MS. HERMAN: I think I indicated -- I don't have
28 my copy right in front of me -- I indicated where I referred to

1 staff.

2 But staff absolutely helped us, all of us that
3 fill out this document. Those are very technical questions, and
4 somebody just coming on this Board is not going to be able to
5 give you the depth.

6 I wasn't given any instructions as to whether to
7 go off the top of my head, or to seek staff's advise. I thought
8 it was very important to answer these questions with what the
9 L.A. Regional Water Quality Board staff has accomplished.

10 And I think my thoughts are in there.

11 SENATOR BOWEN: Well, I don't have any objection
12 at all to anybody consulting with staff. I think it's really
13 important.

14 But when you're asked a question about any
15 specific areas of operation that you think you would benefit
16 from increased efficiency, or recommendations for improving
17 efficiency, what you report is what staff identifies, with then
18 no indication of whether or not you agree.

19 MS. HERMAN: I gave in my opening remarks some
20 examples of what I thought might, you know, be helpful. And
21 definitely sought out staff, again, as I said earlier, to seek
22 the best answers for these questions.

23 And certainly I wouldn't have submitted them if I
24 didn't agree with staff.

25 SENATOR BOWEN: I don't take that for granted
26 because very often we get a committee report from staff on a
27 bill, and the staff report is a staff report, and the Members
28 may or may not agree. It's on our job to form an independent

1 value judgment.

2 So, you know, I was concerned.

3 MS. HERMAN: I understand that.

4 SENATOR BOWEN: Let me turn just to the
5 substance for a minute. What is status of beach pollution in
6 the L.A. region right now? I'm asking that as somebody who
7 represents beach from Venice to San Pedro.

8 MS. HERMAN: Anecdotally? I mean, I'm not a
9 scientist. I can't give you quantification in terms of --

10 SENATOR BOWEN: I don't need quantification. But
11 there are all kinds of report cards and measures.

12 MS. HERMAN: It's probably at a D or an F.

13 SENATOR BOWEN: Have TMDLs been developed for the
14 areas that have public beaches in L.A. County?

15 MS. HERMAN: Indirectly.

16 SENATOR BOWEN: Are there any areas where TMDLs
17 remain to be developed.

18 MS. HERMAN: I think that we have dozens of TMDLs
19 coming down that will be before us, and we've already done about
20 25 of them. They all would impact the beaches, the runoff, and
21 the waters, the receding waters.

22 SENATOR BOWEN: Has your Board used your portion
23 of the \$34 million from the Clean Beach Initiative?

24 MS. HERMAN: What do you mean my?

25 SENATOR BOWEN: The Board's portion.

26 MS. HERMAN: I don't think so. I don't know.

27 SENATOR BOWEN: Do you know what the plans are
28 for how to spend that money, or what should be done to continue

1 to work on the beaches in L.A. County?

2 I mean, these beaches are not just recreational.
3 They're a major driver of --

4 MS. HERMAN: Oh, totally.

5 SENATOR BOWEN: -- of the economy.

6 MS. HERMAN: Certainly, certainly.

7 No, I don't know the exact plan on this L.A.
8 Regional Board.

9 SENATOR BOWEN: How do you think discharge
10 permits should be put together to ensure that the waters where
11 waste is being discharged are still clean enough for other
12 beneficial uses? How do you balance the need for other business
13 and residential users to use water against the cost to the
14 pollutor?

15 MS. HERMAN: Short of the system that we're using
16 now, I would think that this is the system, unless we call in
17 all the regulated communities.

18 SENATOR BOWEN: I'm asking how you personally
19 balance it. From what I can tell, you personally balanced it by
20 voting against everything.

21 MS. BORUCKI: I'm voting against things because I
22 have concerns about the cost, and how the regulated communities
23 are going to meet them, and the timelines.

24 How would I do it? Probably very similarly, but
25 maybe with more -- more of an open dialogue with the regulators
26 and the regulated community to try to really understand the
27 science.

28 There just constantly seems to be a battle over

1 the science. I'm not hearing all the time that it's not, "We
2 won't do it no matter what." It's "Let's make sure it's cost
3 effective."

4 If we're going to do this, and the science proves
5 that we'll get to a certain level, whether it's one milligram
6 per liter, or gallon, or whatever, let's make sure that we're
7 using the right science so we don't have to undo this and do it
8 over again.

9 SENATOR BOWEN: I have nothing further.

10 CHAIRMAN PERATA: Senator Cedillo, anything
11 further?

12 SENATOR BATTIN: Move the confirmation.

13 CHAIRMAN PERATA: Okay. We have a motion to
14 approve.

15 Anyone in the audience in support may come
16 forward at this time.

17 MR. JOHNS: Mr. Chairman and Members of the
18 Committee, my name is Craig Johns with California Resource
19 Strategies here today on behalf of the Calleguas Creek Watershed
20 Association. It's a Stakeholder group located in Ventura
21 County, doing a number of TMDLs in the watershed.

22 We've appeared before the Los Angeles Regional
23 Board on a number of items over the years. We've found,
24 contrary to the letter that you received from several of the
25 environmental NGOs recently, that Ms. Herman is very engaged,
26 always very prepared, asks extremely tough questions of staff
27 and interested speakers, and is fair and open-minded.

28 I think some of the responses you've heard from

1 her today indicates that she's a very independent thinker. It's
2 something that is extremely necessary on the Regional Water
3 Boards throughout the state, particularly in Los Angeles. There
4 are a number of very complicated and complex issues facing that
5 region.

6 And those of us who work with the Regional Board
7 staff, both -- always cooperatively, sometimes in agreement,
8 sometimes in opposition, we appreciate the leadership that
9 Ms. Herman has shown on some of these issues. We urge your
10 support and confirmation.

11 Thank you very much.

12 CHAIRMAN PERATA: Thank you.

13 MS. DILLON: Thank you Mr. Chair and Members.
14 Christina Dillon, representing the California Association of
15 Sanitation Agencies, and today also the Los Angeles County
16 Sanitation Districts. I'm substituting for Mike Dillon, who had
17 to step away briefly. We represent about a dozen of our
18 members. We're regulated by the L.A. Regional Board.

19 In the short time that Ms. Herman has been on the
20 Board, she's demonstrated a common sense approach to complicated
21 issues, and we would wholeheartedly support her confirmation
22 today.

23 Thank you.

24 CHAIRMAN PERATA: Thank you.

25 Thank you, Mr. Chairman, Members of the
26 Committee. I'm Kathy Cole with the Metropolitan Water District
27 of Southern California.

28 I can attest to Bonny's long history of community

1 service to the Southern California communities. She is a
2 problem solver. And as she mentioned in her opening, her term
3 on our Board, she definitely understands the complexity of water
4 quality issues, and has demonstrated an effectiveness to find
5 balanced and fair solutions.

6 And I urge her confirmation. Thank you.

7 CHAIRMAN PERATA: Thank you.

8 Any in opposition?

9 MS. MINTZ: Good afternoon, Honorable Chair and
10 Committee Members. My name is Leslie Mintz, and I am the
11 Legislative Director of Heal the Bay. And I'm here today to
12 represent Heal the Bay and the Santa Monica Baykeeper.

13 You have our letter, and you also have the
14 comments by Senator Bowen, which details some of our concerns.

15 I will say that I do believe that Ms. Herman was
16 owed the courtesy of a meeting, and on behalf of my organization
17 I apologize. I think our restraints on staffing contributed. I
18 also think the fact that her comments have been generally
19 perceived as extremely polarized in favor of cost and economics
20 probably was one of the elements that prevented us from reaching
21 out.

22 Nonetheless, we do appreciate the fact that
23 Ms. Herman has a background with cities. We think that it's
24 appropriate that the Water Board have that voice. However, any
25 such voice, it's imperative, needs to be knowledgeable and
26 impartial. And unfortunately, we believe that Ms. Herman is
27 neither.

28 We have looked at her record since 2004, during

1 her -- when she was first appointed, and we believe she has
2 demonstrated a stunning lack of knowledge about water quality,
3 and a failure to fairly accord all viewpoints.

4 We also wish to note for this Committee that in
5 Heal the Bay's 20 years of existence, our anniversary was this
6 year, we have never formally opposed any appointment for air or
7 water. So, this is a departure for us, and it was undertaken
8 after great consideration. It is not our usual modus operandi
9 to oppose people in this forum. However, we are very concerned
10 about the fact that L.A. is a crucible. It is a huge metropolis
11 with a lot of massive pollution problems, and it requires some
12 very sophisticated water quality knowledge.

13 We believe that, as detailed in our letter, in
14 our joint letter with NRDC and the Santa Monica Baykeeper that
15 the lack of knowledge is just utterly apparent. As a matter of
16 fact, even in the last week's hearing of September 1st for Tapia
17 at the Regional Board, over 10 staff members discussed with me
18 the fact that they were concerned by the appearance that
19 Ms. Herman was misunderstanding the concept of a berm, b-e-r-m,
20 which is very important in the Mount Lagoon pollution problems,
21 that she confused it with the concept of birds and bird
22 pollution. And I am reporting to you what 10 different
23 individuals said to me. She may have in fact prepared, and her
24 comments may have been, in fact, directed towards bird
25 pollution. I can tell you that in my experience with Tapia,
26 that is not an issue, so that would be of some concern to me,
27 that there was even focus on that issue.

28 Anyway, so that's just recently last week, and

1 that is an itemization not in our letter. I'm reticent to --
2 to reduce any comments here to the petty level of individual
3 comments like that, but I think there's a pattern here about a
4 lack of preparedness, a lack of knowledge. And clearly, our
5 comments and the over 600 pages of transcripts we have
6 personally reviewed indicate that there's certainly a
7 predilection for concerns about costs.

8 We would urge you to deny confirmation
9 accordingly. Thank you.

10 SENATOR BATTIN: I have a question.

11 Ms. Herman was appointed on the 13th of December,
12 2004.

13 In the letter that you sent nine days ago, you
14 talk about votes that she had cast in January 27th of 2005.

15 In this entire time you didn't have the staff
16 ability to talk to her?

17 MS. MINTZ: Up until two weeks ago, there was
18 only one functioning person in my department, me.

19 SENATOR BATTIN: So, you didn't have the ability
20 to talk to her?

21 MS. MINTZ: I believe that my leadership, as I
22 indicated, was so taken aback by the commentary during
23 proceeding Board meetings that the effort was not made.

24 And I do agree with you, that as a matter of
25 simple courtesy, that should have been done.

26 However, that doesn't alter the fact that we have
27 reviewed the record carefully, and based our opinions on that
28 fact.

1 SENATOR BATTIN: You just decided that you would
2 wait nine days before her confirmation hearing to sandbag her?

3 MS. MINTZ: That was not -- I can tell you truly,
4 despite appearances, that was not our intent.

5 SENATOR BATTIN: Honestly, despite appearances,
6 it's what you did. I mean, if you have the objections to her
7 confirmation, and you are completely entitled to them, and the
8 Committee will vote how the Committee feels, it's just not the
9 right or decent thing to do to anyone, to say we're going to
10 wait nine days before you're confirmed. We're going to drop
11 all these allegations on you, and then we're going to come here
12 and testify against you at your hearing, when you clearly have
13 looked at her record. You didn't have the ability to even go
14 talk to her.

15 And it concerned her so much, she brought it up
16 in her opening statements and said, I don't know why they have
17 all these criticisms. They've never had the common decency to
18 come, actually talk to me.

19 And you've been tracking her all this time. I
20 just don't think it's appropriate at all.

21 MS. MINTZ: Her feelings of appropriateness are
22 likely justified, but that does not alter our opinion on the
23 facts.

24 CHAIRMAN PERATA: Thank you.

25 Next.

26 MS. ROME: Good afternoon, Mr. Chair and
27 Members. I'm Victoria Rome from NRDC, the Natural Resources
28 Defense Council.

1 We're also here in opposition.

2 And unfortunately, just based on the voting
3 against TMDLs, we feel that demonstrates an unwillingness to
4 fulfill the basic legal requirements of the Board.

5 Thank you.

6 CHAIRMAN PERATA: Thank you.

7 Any further opposition?

8 We have a motion by Senator Battin. Call the
9 roll.

10 SECRETARY WEBB: Ashburn.

11 SENATOR ASHBURN: Aye.

12 SECRETARY WEBB: Ashburn Aye. Bowen.

13 SENATOR BOWEN: No.

14 SECRETARY WEBB: Bowen No. Cedillo. Battin.

15 SENATOR BATTIN: Aye.

16 SECRETARY WEBB: Battin Aye. Perata.

17 CHAIRMAN PERATA: Aye.

18 SECRETARY WEBB: Perata Aye. Three to one.

19 SENATOR BATTIN: Congratulations.

20 MS. HERMAN: Thank you, I think.

21 [Thereupon this portion of the
22 Senate Rules Committee hearing
23 was terminated at approximately
24 4:19 P.M.]

25 --ooOoo--

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

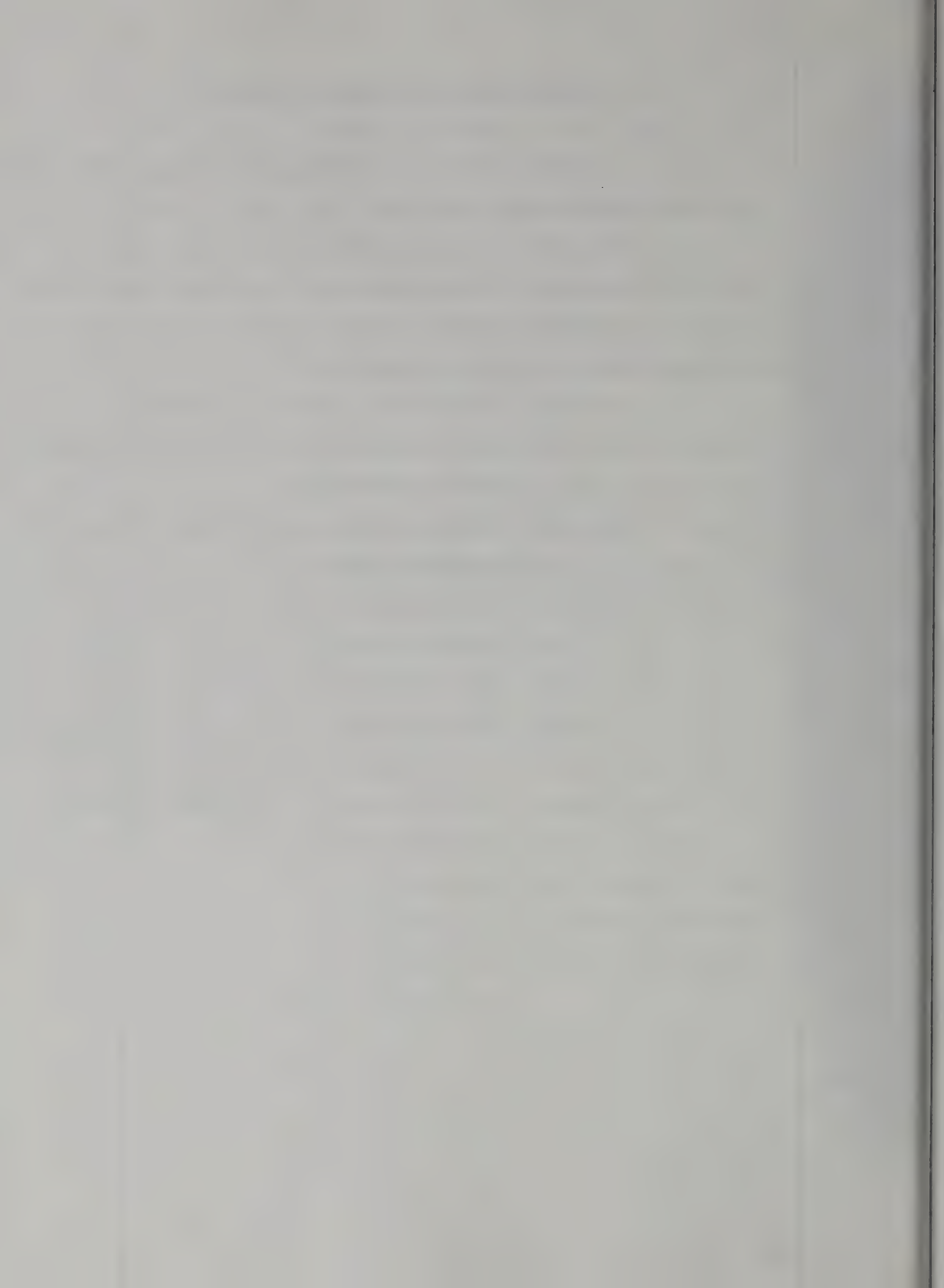
That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

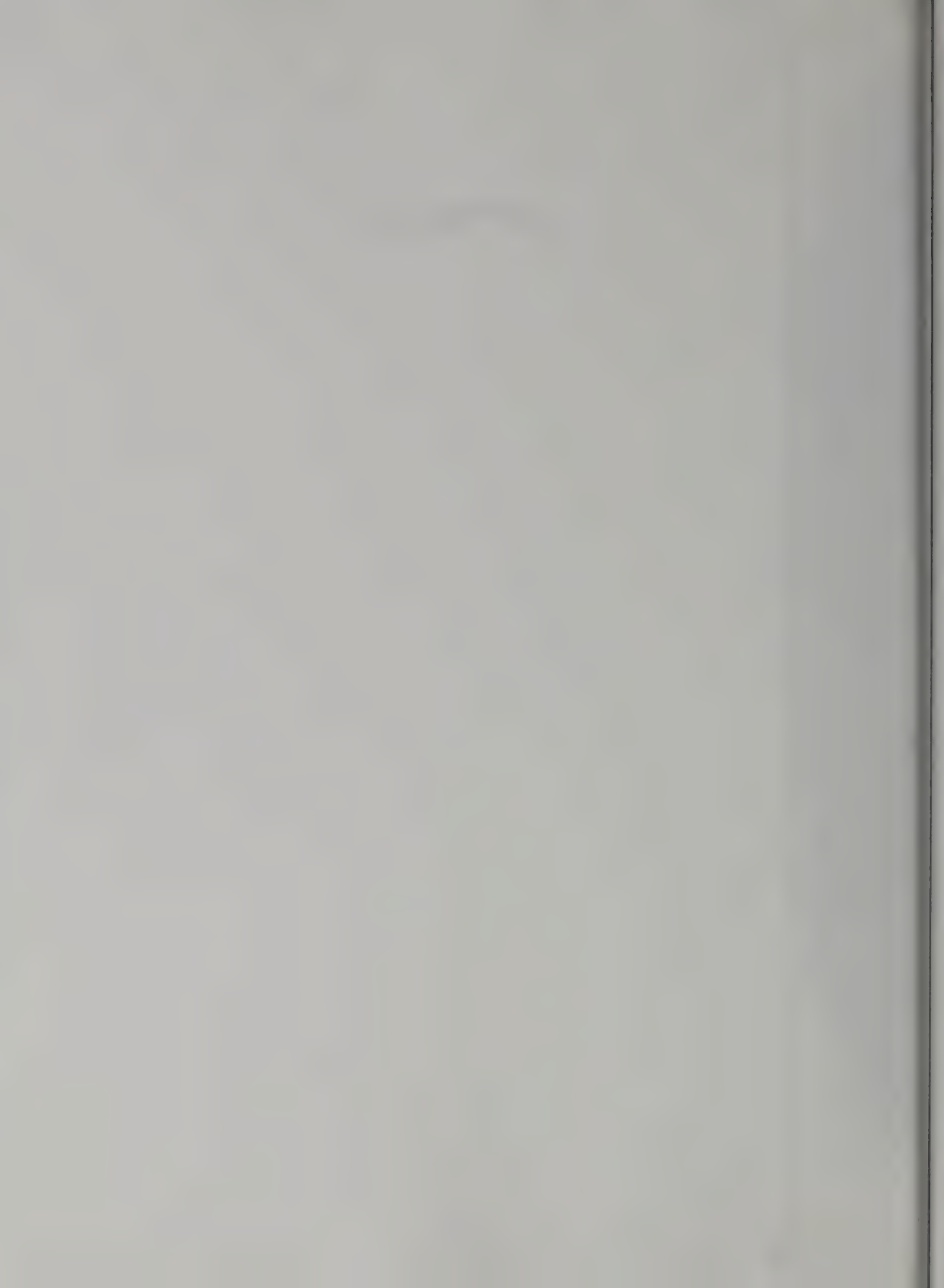
12th day of September, 2005.


EVELYN J. MIZAK
Shorthand Reporter



APPENDIX

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Statement of Goals

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as director of the department?*

The Department of Motor Vehicles (DMV) is a multifaceted department with broad and varying areas of responsibility. Beyond licensing drivers and registering cars, we also license vehicle manufacturers, dealers, salespersons, driving and traffic violator schools; collect parking fines; collect voter registration information; and suspend drivers for unpaid child support. As we work to improve on our various areas of responsibility, we will focus on the following areas.

Continued Customer Service Improvements

The DMV has recently made tremendous customer service improvements. We have reduced wait times in our field offices from over one hour to twenty minutes and telephone wait times from over five minutes to less than two minutes. The challenge now and in the future will be to maintain and even improve customer service despite impending mandates and growing workloads.

In field offices, much of our focus has been on walk-in traffic from the general public and we have made much progress in that respect. However, to maintain and improve service levels significantly, we must also focus on walk-in industry customers who often have multiple transactions. With the current state of technology and our success with other initiatives in this area, there is an opportunity to conduct many industry transactions safely and securely through an electronic interface. This will not only improve service to industry customers, but also free our customer service representatives to help walk-in general public customers. I am also mindful that, as we provide more service through electronic interfaces, our need for information security, auditing, and quality control increases.

Customer service is more than just wait times. It is also the quality of the service we provide. Customers expect and deserve fast and friendly service. Customers should be able to complete their transaction in one visit and to have their issues resolved as expeditiously as possible.

Senate Rules Committee
Responses to Confirmation Hearing Questions
Joan M. Borucki, Director
Department of Motor Vehicles
June 13, 2005

We have also provided the option of completing several transactions over the Internet, including vehicle registration renewal and driver license renewal. There are more transactions that will be available to both businesses and the general public in the near future. Customers expect and should be able to use modern payment methods including debit cards, credit cards, and electronic funds transfer.

Motor Carrier Focus

The motor carrier industry is vital to California's economy. It is critical that we collaborate with other departments and the motor carrier industry to promote efficiency and safety in the movement of goods. In balancing efficiency and safety, we must also comply with several Federal programs, including the Motor Carrier Safety Improvement Act of 1999 and the USA PATRIOT Act. We must also prepare for the impact of the North American Free Trade Agreement (NAFTA) as our borders open to international trucking.

Driver Safety Focus

Our driver safety programs will be focused on improving our tools for assessing driver competency at initial licensing and monitoring driver risk. There are two specific areas that will be prioritized. One is the growing segment of senior drivers and the other is young, inexperienced drivers. As drivers age, their motor skills and reaction times decline, and medical conditions that can affect safe driving become more common. We are continuing to research, evaluate, and implement more effective methods of assessing driver competence, such as the three-tier driver assessment system that is currently under development. For younger drivers, our focus is on education about high risk driving behavior and taking quick and appropriate actions against their driving privilege based on evidence of poor driving performance.

Performance Management

Sustaining our progress means ensuring that we have an internal process and structure that is able to utilize our resources as efficiently and effectively as possible. In order to make intelligent, responsible decisions about needed improvements, we must have and use meaningful data. I have begun a major effort to implement an effective performance management system at the DMV. The key to this effort is tying our vision, goals, and performance measures to our internal budget process.

California Performance Review (CPR)/Customer Service Strategies

2. *In 2004 DMV eliminated an online \$4 dollar convenience fee for vehicle registration renewal fees. Has the elimination of the \$4 dollar convenience fee increased online transactions? By how much? How much money has this saved in comparison to in-person, phone and mail transactions? Has the effort reduced DMV personnel workload? Why or why not?*

California's population continues to increase at over 500,000 people per year. Moreover, California's population often grows in geographic areas not currently served by a DMV field office. The number of Internet transactions continue to grow as more and more Californians have access to the Internet and become more accustomed to using it.

As we evaluate our opportunities to maintain and improve service in light of increasing workloads and limited resources, the Internet has proven to be a key opportunity. The Internet provides a fast, convenient, and efficient service option that more and more Californians are embracing. Elimination of the \$4 convenience fee for Internet transactions removed a significant barrier to increased usage of Internet transactions.

The elimination of the \$4 convenience fee has increased online transactions. In fiscal year 2003/04, there were 1.2 million vehicle registration renewals processed over the Internet. For the 2004/05 fiscal year, it is projected that there will be over 2.15 million vehicle registration renewals processed through the Internet. This represents an increase of approximately 80 percent. Recent statistics are more encouraging. Over the last four months, just under one million vehicles were registered over the Internet.

Our most recent calculations show that vehicle registration renewal costs the department \$2.43 when completed over the Internet, \$2.47 by mail, and \$11.42 when completed in field offices. The cost for mail renewal does not include the cost of replacing the mail remittance equipment.

As the overall workload of DMV increases, more vehicles need to be registered and more drivers need to be licensed. Without service delivery options such as the Internet and phone, the workload of the traditional methods of standing in line in the field offices or mailing in the renewal will continue to increase. Although the shift of customers from the mail and field offices to the Internet and phone has not yet yielded reductions in expenditures or personnel, it has mitigated the need to expand field office and mail services to meet the needs of the growing State population.

We are working to offer new payment options to the public. One payment method that is currently in the feasibility study phase is Electronic Funds Transfer (EFT). This will allow a customer using the Internet or the phone the option of having the amount of their fees deducted directly from their bank account, just as if they had paid with an electronic check. This service will also benefit DMV and the State as a whole. The service fees for processing EFT payments are minimal (\$0.03 per transaction).

3. *Is DMV addressing any improvements with queuing technology systems and encouraging more people to complete business by mail or online? If so, would you please outline what efforts the department is making to address better service and online transactions, as well as any additional measures that are being considered.*

Currently, we have queuing systems in 92 field offices, and will expand to an additional 42 offices. Our effective use of the data derived from the queuing systems was one factor that helped dramatically reduce wait times that were averaging one hour to less than 30 minutes within three months. We continue to analyze the data to identify efficiencies and improve customer flow.

We provide service to two customer groups: the general public and industry customers. To significantly improve service in the near future, we will leverage improving service to industry customers to the benefit of the general public. When more industry customers transact business with us online, our customer service representatives are freed to serve the general public. We recognize that industry customers are ready to embrace online transactions today. An example of this approach is our Salvage Pool Pilot Project.

In the past, salvage pool companies had to fill out applications for salvage vehicle certificates on their computers, print them out, and then deliver them to the DMV where they had to be keyed in again. Implemented in June 2004, the Salvage Pool Pilot Project allows salvage pool companies to submit their own applications electronically. Salvage pool companies now obtain their certificates in three days, instead of four to six weeks. One company reported an annual savings of more than \$6 million dollars by being able to move inventory much faster. For DMV, this project reduces workload in field offices, thus freeing more customer service representatives to assist the general public.

We are continuing to capitalize on similar opportunities. We are replacing our International Registration Plan System¹ so that business partners can process their own transactions, among other benefits. We are expanding our Business Partner Program by allowing them to conduct more types of transactions and will be moving them to an Internet based connection to reduce their capital investment and streamline transactions. We are also improving services to auto clubs as they increase the number of transactions they complete for their members.

We are also pursuing the deployment of Self-Service Terminals (Kiosks). Our recent Self-Service Terminal pilot showed that the technology is reliable and easy to use and customers are ready to embrace it. In the pilot, customers could complete registration renewals and receive their new registration cards and stickers on the spot. We will explore additional functionality and locations for the terminals as the project progresses.

We have made tremendous strides in customer service over the last year by providing new service options and eliminating the \$4 convenience fee. We currently use press releases, mailing inserts, and posters to encourage the use of new service options. In the coming year, we will focus on more customer outreach and education. As more Californians become aware of Internet service options, we anticipate a correlating shift from in-person and mail transactions.

¹ The International Registration Plan is a federally mandated interstate apportioned registration program. Under this program, the home jurisdiction of an interstate truck is responsible for collecting registration fees and distributing them to other states in proportion to the number of miles the particular truck was operated in each state.

Another effort that DMV is pursuing to encourage people to use online services is making more types of transactions available through the Internet. In September 2004, the online driver license renewal service was added. This has proven to be very successful, as nearly 300,000 people have used this service since it was introduced. And soon, the general public and industry customers will have the option of filing Notice of Release of Liability² forms through the Internet. This will allow much faster updates to their vehicle records.

4. *What is the status and condition of DMV's existing computer system and data storage capacity? Are the computer systems and data storage sufficient to handle California's growing population?*

Although our data storage is sufficient to handle California's growing population, it has become more and more difficult and labor intensive to make any modifications to our legacy programs.

The DMV has several computer systems and databases. The most prominent and visible components are the vehicle registration (VR) system and the driver's license (DL) system. These systems are comprised of over 1200 distinct programs that function together. Approximately 70% of the programs were created in the 1960s using obsolete computer languages. Over the years these programs have been modified to accommodate required changes in functionality and added requirements. The result is a system that is efficient in terms of processing speed, but cumbersome in terms of adaptability. It is increasingly more difficult to incorporate more changes to the current VR and DL systems.

These computer programs are supported by a staff of programmers and technicians that are nearing retirement age. Currently, almost 20% of the IT staff are eligible to retire and within 4 years approximately half of the IT staff will be eligible to retire. These personnel have the institutional knowledge about the VR and DL systems, and more importantly, knowledge of the technologies upon which the programs were built.

² Vehicle owners must file a Notice of Release of Liability when they no longer own a vehicle so that the DMV knows they are no longer responsible for registration fees, parking tickets, and other liabilities that accrue to that vehicle after transfer of ownership.

5. *With regard to biennial vehicle registration, the legislative analyst states that the \$1 billion windfall to the General Fund from the Vehicle License Fee (VLF) would require a constitutional change, since the VLF revenues are constitutionally required to be disbursed to local governments. According to the legislative analyst, the VLF windfall could be construed as a one-time tax increase. What is DMV doing to address the legislative analyst's concerns about biennial registration?*

We are not implementing biennial vehicle registration nor is there any direction from the Governor's Office to pursue such an initiative. The idea was raised in an effort to identify initiatives that would reduce workload. It was recognized that this initiative could also provide a one-time windfall to the general fund, but we agree with the LAO that it may require a Constitutional Amendment.

Driver License Identification

6. *How is the administration planning to comply with the federal Real ID Act of 2005?*

Until federal regulations have been promulgated, we cannot determine the full impact to the public and the department. The department is working with the Governor's Office in Washington D.C. to stay abreast of on-going developments.

7. *What would be the timeline for compliance and implementation of this federal law?*

States have three years – until May 11, 2008 – to comply. If the minimum issuance standards have not been met by the state at the end of three years, the driver license and identification cards issued by that State would not be recognized by federal agencies as a form of identification. Section 202 (a)(1) of the bill states,

"IN GENERAL- Beginning 3 years after the date of the enactment of this division, a Federal agency may not accept, for any official purpose, a driver's license or identification cards issued by a State to any person unless the State is meeting the requirements of this section."

The language of the law itself leaves many unanswered questions that, hopefully, will be clarified through the federal regulatory process. It is unknown if the States must meet the compliance requirements on a day forward basis, or if all existing cardholders must be re-evaluated by May 11, 2008. Once again, until federal regulations are promulgated we can only speculate on the overall impact.

8. *If SB 60 were to become law, is the DMV prepared to efficiently address the responsibilities and implementation requirements? If not, please outline what is necessary to efficiently address the responsibilities and implementation requirements of SB 60/The Real ID Act of 2005?*

SB 60 is predicated on the Real ID Act, therefore we will not know the requirements or impact until federal regulations are established to clarify the Real ID Act. In my role as administrator, I will do everything in my power to implement the policy decisions made by the Legislature and the Governor.

9. *What is the estimated cost to implement SB 60 and compliance with the Real ID Act of 2005?*

Until the total impact of the promulgated federal regulations is evaluated, the specific costs for the implementation of the Real ID Act or SB 60 cannot be accurately assessed.

The department is closely watching any type of regulatory activity for the Real ID Act and continually evaluating its impact on the driver license and identification programs to prepare for implementation.

Biometrics Technology and Driver Licenses/Identification Cards

10. *The task force has been directed to meet every two weeks beginning in February 2005 and updates are to be made to the steering committee every 30 days. As chair of the task force please indicate the status of these discussions.*

Positively identifying individuals is essential to protecting the public from fraud and identity theft, improving traffic safety by catching suspended and revoked drivers from creating a new identity, and increase the security of Californians.

Today, we capture biometrics in the form of photographs and thumbprints, but we currently do not have the ability to compare photographs or thumbprints across our database. The limitations of the current system to prevent fraud led to the creation of the Identity and Privacy Protection Policy Steering Committee and Task Force to explore how an improved biometrics system could improve our verification of individuals.

To ensure that any recommended solution is viable for California, we have solicited and received input from individuals representing various entities, including law enforcement, privacy rights advocates, biometric technology experts, businesses, financial institutions, retailers, grocer associations, and sellers of alcohol beverages. We are also conducting focus groups to gauge Californian's concerns and acceptance of biometric solutions. This input will assist the task force in formulating the forthcoming recommendations.

To date, the Steering Committee and Task Force have accomplished the following:

- Identified the issues in securing personal identity and protecting privacy.
- Reviewed the issues relative to the use of identity source documents to establish identity.
- Identified the policy issues related to strengthening the identification process in California through the use of biometrics.
- Held discussions with various stakeholders and reviewed stakeholder input.
- Researched biometrics technologies and compared the pros and cons.
- Determined the practical uses and feasibility of a biometrics identification solution for state government.
- Discussed and addressed the various policy issues involved in implementing a biometrics identification system to establish identity and protect privacy.
- Discussed the possibility of establishing a verification of identity source documents with the Department of Health Services.

Our original goal was to submit a policy recommendation on identity and privacy protection to the Governor's Office by June 30, 2005. However, the Real ID Act will affect the recommendations and may delay the final report until the related federal regulations become clearer.

11. What are some of the needs, challenges and benefits of implementing a biometrics system to automate the identification or verification of driver license or identification card applicants? What type of biometric technology will be used? Are new technologies involving fingerprints, facial recognition or iris scanning being considered? Is the task force considering radio frequency identification (RFID) technology? What are the potential benefits and disadvantages to putting RFID chips in driver licenses?

What are some of the needs, challenges and benefits of implementing a biometrics system to automate the identification or verification of driver license or identification card applicants?

The need to accurately identify individuals, and establish and protect personal identity has become more critical. The latest research indicates that over nine million Americans were victims of identity theft in 2004. The total cost of the crime to victim and businesses was over \$52 million. Victims spent an average of \$652 out of pocket and 28 hours resolving their problems, with many having to devote hundreds of hours to clearing up fraudulent credit and criminal records in their names³. The Federal Trade Commission reported that California ranked third on the identity theft chart with 43,839 victims in 2004. The top California identity theft victim locations are Los Angeles, San Diego, San Francisco, Sacramento, and San Jose⁴.

Increased concerns about strengthening homeland security, protecting consumers and businesses from fraud, and a rise in identity theft have added to the need to improve individual authentication methods and make personal identity as secure as possible. The California Department of Motor Vehicles' goal of "One Identity, One Record, One License" reflects the increasing role the California driver license and identification cards plays in identification. Over the last decade, the department made tremendous strides in securing the integrity of its database. Despite these efforts, fraud can occur due to weaknesses created by manual processes. Currently, the Department of Motor Vehicles does not have an automated means to validate the identity of an individual from the biometrics data (i.e., thumbprints and facial photographs) maintained in its records.

³"2005 Identity Fraud Survey Report", Better Business Bureau, www.javelinstrategy.com/reports/2005identityfraudsurveyreport.html.

⁴"Consumer Sentinel Complaint Statistics and Trends", Pages 14-21, February 1, 2005, www.ftc.gov

Finally, traffic safety will be improved by the ability to identify individuals who attempt to obtain a driver license under a different identity because they are unable to obtain a driver license under their true identity due to driving under the influence violations or previous revocations or suspensions for various reasons.

The use of biometrics to automate the identification and verification of individuals can prevent fraud and identity theft and improve security by ensuring that individuals cannot create multiple identities or assume another person's identity.

There are several challenges to implementing a biometrics system including federal mandates, impacts to the public and customer service, system access, system security and privacy protection, implementation timeframes, and our information technology infrastructure. The Task Force is evaluating each one of these challenges.

What type of biometric technology will be used?

The Task Force is exploring and evaluating several types of biometric technologies including fingerprints and facial recognition. Some considerations include intrusiveness, accuracy, reliability, and ease of use.

Are new technologies involving fingerprints, facial recognition or iris scanning being considered?

The Task Force is investigating and comparing various biometric technologies. Iris scanning is not being considered at this time because of perceived intrusiveness, difficulty of capture, and the technology is largely proprietary.

Other biometric technologies were also considered; however, these technologies do not appear to meet our goal nor contain the key elements required for a large-scale automated biometric system. These technologies include: voice recognition, hand geometry, retina scan, and signature dynamic.

Is the task force considering radio frequency identification (RFID) technology?

Radio frequency identification (RFID) is not being considered at this time.

What are the potential benefits and disadvantages to putting RFID chips in driver license?

Since we are not considering and have not thoroughly researched RFID, we have no basis for answering this question.

12. What are some of the privacy, security and civil liberties issues that may arise through the implementation of a biometrics identification system with respect to the DMV? How will you address those issues?

The Task Force sought input from several privacy rights groups and financial institutions, among others, to discuss and receive input on issues including privacy, security, and civil liberties. We received valuable input from these meetings. The issues identified by these stakeholders include:

- Verification of identity source documents.
- Intrusiveness, effectiveness, and cost of a biometric system.
- Purpose and use of a driver license.
- Role of the government in identification.
- Location of the data.
- Use of biometrics to clear individuals if another person misidentifies himself or herself to law enforcement.
- Ability of DMV to design, implement, and maintain a biometrics system.
- Potential secondary uses by commercial entities.
- Security and encryption of data.
- Security breaches.
- External audits.
- Tracking procedures to control and identify data access for auditing and investigation of system abuse.
- Expense to financial institutions of biometric reading equipment.
- Notification to individuals about the purpose and use of their biometric data.
- An individual's access to his or her own biometrics data and related information.

These issues are being discussed and evaluated by the Task Force. To address the issues of privacy and data security more comprehensively, a Privacy Impact Assessment will be completed prior to the implementation of a biometrics identity system that will address the following questions:

- What information is collected?
- Why is the information collected?
- How will the information be used?
- Can individuals decline to provide the information?
- With whom will the information be shared?
- How will the quality of the information be maintained?
- How will the system be secured from unauthorized access or use?
- How long will the information be retained?
- How will oversight of the system be performed?
- What privacy policies and procedures will be used to protect the information?
- Who will be accountable for compliance with the privacy policies?

To address these issues, we must be very clear about the purpose and use of the data; have well-defined and controlled access; communicate the purpose and use to the public; ensure that technological safeguards and information security best practices are in place and evaluated regularly; effectively monitor access, and continually review and update policies and procedures to reflect a changing environment.

13. *Who will have access to any biometrics database maintained by the DMV? Do you believe that secondary use by nongovernmental entities such as the private sector is appropriate? What limits, if any, should be placed on these entities' use of any database?*

Only those authorized by law will have access to any DMV biometrics database. Existing law is clear on who can obtain DMV information. This issue was discussed at a Task Force meeting and neither the financial institutions nor the privacy rights groups saw any benefit that outweighed the costs of increased access at this time.

14. There has been much concern recently regarding security breaches in data. How will any biometrics database be secured against unauthorized access or modification? If there is a breach, will affected individuals be notified?

We are very cognizant of our responsibility to maintain the public trust. This is a driving factor in our effort to improve our identification verification system. We also recognize that the security of the data we use to establish and verify identity is of the highest priority.

We must be very clear about the purpose and use of the data; have well-defined and controlled access; communicate the purpose and use to the public; ensure that technological safeguards and information security best practices are in place and evaluated regularly; effectively monitor access, and continually review and update policies and procedures to reflect a changing environment.

We currently employ rigorous standards and security measures to safeguard our data and will continue to employ these best practices. We would continue to use data encryption and automated and manual processes to check for unauthorized access attempts or failed authentication, periodic vulnerability scanning, and intrusion detection. Our Information Protection Services Office will monitor and enforce the Information Security Program.

If there is a breach, the affected individuals will be notified, even if the information is encrypted, whether or not law requires it.

15. Is the task force considering alternative ways to combat driver license fraud instead of the creation of a biometrics database? If so, what are these alternatives?

The task force has acknowledged that much more needs to be done to safeguard against the issuance of driver licenses containing false information. Congress, in enacting the REAL ID Act, recognized that significant improvements in the procedures used by states in issuing licenses had to be made. For example, it is well known that identity source documents currently cannot be easily verified through the agency that issued them. U.S. birth certificates are routinely accepted after a visual inspection for driver licensing purposes without confirming the authenticity of these documents through the issuing agency. That is why Congress

mandated that source documents would now have to undergo such confirmation prior to issuance of the license.

However, any document is subject to misuse. There is no way to tell that a person submitting a certified copy of a valid birth certificate is really the person whose name appears on that document. While the document is genuine, the person using it can be someone else entirely whose intent is to commit fraud. That is why there is a need to improve both our procedures for authenticating identity documents and to establish a biometric system that uniquely identifies each license holder. Without this personal biometric component, licenses will continue to be susceptible to fraud. The challenge is to ensure that the method used to capture biometric information, and the systems used to safeguard this personal information, are safe, secure and protected from unauthorized disclosure.

DEPARTMENT OF MOTOR VEHICLES

OFFICE OF THE DIRECTOR

P.O. BOX 932328

SACRAMENTO, CA 94232-3280



July 22, 2005

The Honorable Don Perata
President pro Tempore, California State Senate
State Capitol – Room 400
Sacramento, CA 95814

Dear Senator Perata:

Attached are responses to the questions posed in your letter dated July 6, 2005, which were sent in preparation for my August 17, 2005, confirmation hearing as Director of the Department of Motor Vehicles.

This second set of questions deal with the department's efforts to prepare for implementation of the REAL ID Act, as contained in HR 1268, which was signed into law on May 11, 2005. I have answered the questions to the best of my ability given the fact that many of the final decisions and requirements will not be known until the federal rulemaking process is concluded. We do not have a firm date for when that process will end, but there has been some indication that the Department of Homeland Security, which has responsibility for developing the rules, will conclude their work by May 2006.

If I can provide any additional information or clarification at this time, please feel free to contact me at (916) 657-6941. I will be happy to provide a prompt response.

Thank you for your consideration of my appointment and I look forward to my appearance before the Senate Rules Committee.

Sincerely,

Joan M. Borucki
JOAN M. BORUCKI
Director

Attachments

cc: Governor Arnold Schwarzenegger
The Honorable Jim Battin, Vice-Chairman, Senate Rules Committee
Secretary Sunne Wright McPeak, Business, Transportation & Housing Agency

Senate Rules Committee Questionnaire
Confirmation of DMV Director Joan Borucki
July 22, 2005

Question 1. In your judgment, does the Department need legislative authorization to implement or plan to implement both the mandatory and optional elements of the federal REAL ID Act? If yes, what kind of legislation does the department need and how soon? If not, has the department begun to act, in any way, to implement REAL ID?

Response: Current California law governing the issuance of driver licenses will likely need to be modified to accommodate the new licensing requirements of the Act. The department has historically sought legislation to provide conformance with federal mandates in California code(s). Examples include the body of laws enacted to provide conformance with the Commercial Motor Vehicle Safety Act that governs the issuance of commercial truck drivers. Another example involves the legislation enacted last year (AB 3049) to provide conformance in California statutes with the requirements of the Motor Carrier Safety Improvement Act. In these instances, legislation was not introduced here in California until the federal rulemaking process was complete and the full implications were known.

In addition to authorizing legislation to accommodate program requirements, funding issues will have to be addressed through the regular budget process. Costs of implementing the REAL ID Act are expected to be significant and could not be accommodated within the department's existing budget allocation. Therefore, the Legislature will have an opportunity to review and approve any budget request(s) that may be necessary to implement the Act.

The problem in responding more specifically to the committee's question at this time is our lack of knowledge about the final program design and requirements. The Act itself contains only broad references and not until the final rules are promulgated will we truly know the full extent of the impact and what conforming state actions, budgetary and statutory, will be required.

Question 2. Has the Governor, through either the Department or any other state agency, requested that California join other states as part of the federal rulemaking working group which assists in the development of federal regulations designed to implement the REAL ID Act? If not, why not?

Response: Unlike federal legislation enacted at the end of 2004 (S 2845, Public Law 108-458), which specifically required the Secretary of the Department of Transportation to convene a rulemaking panel, the REAL ID Act does not contain such a requirement. At the present time, there is no indication that the Secretary of the Department of Homeland Security (DHS) intends to pull together a working group of state administrators to assist in the process.

Without the benefit of a rulemaking panel, California is limited in our ability to participate in the process. However, we are actively communicating our issues through all avenues available to us.

The Governor's Office agreed that California should go on record with DHS to point out the many areas where the federal Act appears to impose significant changes in California's existing driver license programs. In response, I prepared a letter to DHS Secretary Michael Chertoff dated June 29, 2005. A copy of that letter, which outlines the primary areas of concern facing our department, is attached for your information and is marked as Attachment 1.

Question 3. Both the mandatory and optional aspects of the REAL ID Act require major efforts in storing and transferring data. Does the Department have the necessary computer technology, systems, and expertise to accommodate the REAL ID data requirements? If not, how long will it take for the department to be "systematically ready" to implement the mandatory and optional requirements of the REAL ID Act?

Response: As it relates to the requirements to scan, store and retrieve copies of original identity documents [Section 202(d) of the Act], we do not currently utilize such technology in our licensing systems. Scanning devices will have to be acquired and installed in each of our 168 field offices and in several of our support facilities. We will also have to develop a database to meet the requirements of the act.

This is expected to be a significant effort, both in scope and cost. Budget requests will have to be developed once the rules are released and the system requirements are known. Once the Legislature and Administration approve the necessary funding, it is anticipated that it will require between 18-24 months to complete the acquisition and have an operational system in place.

Question 4. REAL ID requires that states enter into an MOU with the federal Department of Homeland Security by September 11, 2005. Has the Governor, through the Department or any other state agency, drafted or completed the mandatory MOU? If not, why not? And, if not, what is the Governor's timetable?

Response: Unless otherwise determined through the regulatory process, we believe that California is currently in compliance with the requirements of this section of the Act [Section 202(c)(3)(C)]. Shortly after the enactment of the original Legal Presence legislation in this state (SB 976, CH 820, Statutes of 1993, effective January 1, 1994), the department established an electronic link with the federal Immigration & Naturalization System, now DHS, to verify the authenticity of legal presence documents submitted by legal immigrants and legal nonimmigrants.

The department currently has an MOU with DHS that allows us to participate in the Systematic Alien Verification for Entitlements (SAVE) program. A copy of the MOU is attached for your information and is marked as Attachment 2.

The department also has a contractual arrangement with the DHS' private-sector contractor, Computer Sciences Corporation (CSC). CSC maintains the equipment and data lines necessary to inquire against the SAVE system. The current CSC contract is valid from March 1, 2004 through February 28, 2009, and a copy of that contract is included as Attachment 3 for your information.

Please note that a letter has been sent to Secretary Michael Chertoff asking for confirmation that California is already in compliance with the provisions contained in the REAL ID Act that indicates a state must have a Memorandum of Understanding in force by September 11, 2005, which authorizes the state to access the SAVE system. A copy of that letter is attached as Attachment 4.

Question 5. Have you received the policies and implementation plans of the states (e.g. Tennessee, Utah) that issue a "driving only license"? Did those states rely more on policy guidelines created by statute or state regulatory procedures?

Response: Utah and Tennessee are the only two states that currently issue a marked driving privilege card indicating "Not for Identification". These programs were established through authorizing state statutes. The types of documents that both states accept for proof of identification and residency are established by policy and regulation and are not specifically defined in the state code. The Utah program requires the applicant to supply an Individual Taxpayers Identification Number in lieu of a Social Security Number.

Utah's law (SB 227) became effective March 8, 2005. There is no data yet available from Utah that would indicate how many residents of that state are applying for the driving certificates. The Tennessee law (SB 3430) became operative on July 1, 2004. Tennessee estimates there are an estimated 46,000 undocumented immigrants currently residing in the state and report that during the past twelve months they have issued 21,162 driving certificates.

The department will be pleased to provide the Rules Committee with any supporting documents you may need regarding the enactment of the driving certificate laws in Utah and Tennessee.

Question 6. SB 60 would require California to implement both the mandatory and optional provisions of the federal REAL ID Act of 2005. In your opinion, how much additional work/cost will be incurred by the Department to implement the optional provision (driving only license) in SB 60?

Response: The department has analyzed several versions of prior legislation that would allow the issuance of a driver's license to undocumented immigrants. There is general agreement among immigration experts that there are between 2 million and 2.5 million undocumented immigrants of driving age living in California. In our analyses of the legislation, the primary concern has been the sheer magnitude of the population of potential licensees and the impact this would have on our operations.

Even if the department's budget were to be augmented to provide the necessary funding, we are very concerned that our existing infrastructure of only 168 field offices would be quickly overwhelmed by the huge influx of new applicants. The department has made significant improvements in our levels of customer service over the past 18 months and 75% of our customers are now receiving service within 20 minutes of entering our offices. Unless we adequately plan for what could be a tripling of our driver license workload if SB 60 is enacted, wait times in our field offices will again rise to unacceptable levels.

In addition, attempting to implement a separate licensing certificate program will be very difficult as our resources will be severely stretched just to comply with the mandatory provisions of the REAL ID Act.

Question 7. Have you had any discussions with other state DMV directors relative to general costs associated with the implementation of both the mandatory and optional provisions of the REAL ID as contained in SB 60?

Response: I am the Vice President of the Western Region for the American Association of Motor Vehicle Administrators. In this capacity, I have had an opportunity to discuss the Act with a number of state DMV directors. As is the case here in California, these states are very concerned about the final rules and the timelines that will be given for states to comply. Costs are difficult to determine, but estimates of \$100 million have been projected for states like Virginia whose licensing program is much smaller than California's. Most states have additional cause for concern as they do not have the ability to electronically verify legal presence documents and Social Security Numbers, programs that we already have in place here in California. It is fair to say that all states are very concerned about the potential costs and with the extremely short timeframe for compliance- May 2008.

ATTACHMENT 1

LETTER TO THE SECRETARY OF THE
DEPARTMENT OF HOMELAND SECURITY
THE HONORABLE MICHAEL CHERTOFF
FROM DMV DIRECTOR JOAN BORUCKI

DEPARTMENT OF MOTOR VEHICLES

OFFICE OF THE DIRECTOR

P.O. BOX 932328

SACRAMENTO, CA 94232-3280



June 29, 2005

The Honorable Michael Chertoff
Secretary
United States Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

As you begin the process of developing rules to define the specific criteria for implementation of the REAL ID Act, the California Department of Motor Vehicles would like to provide information regarding some of the major impact areas we see affecting our operations. The driver licensing provisions in HR 1268 passed by Congress and signed by the President on May 11, 2005, will present significant challenges to all states. California currently has over 24 million licensed drivers and identification card holders and the decisions made by the rulemaking panel will have a profound impact on our ability to provide service to our customers. We believe that it is in our mutual best interest to work together in determining the exact manner in which the provisions of the REAL ID Act will be implemented.

As you may know, California has had a Social Security Number requirement tied to its driver license program since 1991. Also, since 1994, the department has required applicants for a driver license or identification card to show evidence that their presence in the United States is authorized under federal law. In these two key areas, California has a wealth of experience and we believe we can be a valuable resource for the rule making body.

Many of the requirements specified in the REAL ID Act will impose significant changes in the way we currently issue driver licenses and identification cards. While we understand and support the national security benefits that will be derived from the Act, we must also consider the impact to the millions of law-abiding citizens who use our services each year. The California Department of Motor Vehicles has implemented a number of recent customer service reforms that have brought the average wait times in our field offices to less than thirty minutes. This is in contrast to wait times averaging one hour and more in November 2003. We are justifiably proud of this accomplishment, and yet we realize the decisions you make in implementing the REAL ID Act are likely to have a profound effect on our operations. We want to make sure that our key areas of concern are brought to your attention so that the goals of the Act are achieved with as little inconvenience as possible to California's twenty-four million licensed drivers and identification card holders.

Secretary Michael Chertoff

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We believe the following components of the Act have the greatest potential impact on our operations:

- California does not now electronically scan nor retain copies of the identity source documents (e.g. birth certificates, immigration documents, etc.) presented by applicants. The Act requires that we scan and maintain retrievable copies for at least ten years if stored electronically. This new requirement means that scanning devices will have to be purchased and placed in every one of our 168 field offices, and the computer hardware and software needed to capture, store and retrieve these copies must be acquired. Budgetary and procurement considerations must be made in order to achieve compliance in this area.
- All states must "verify" the authenticity of all identity source documents with the agency that issued the document. There are thousands of state and local agencies that produce birth documents throughout the nation, and no current electronic database contains this information. We read this requirement to mean that we will have to contact the issuing agency and verify the authenticity of approximately 1.25 million source documents submitted with original driver license and ID card applications each year. Such a requirement will necessitate the hiring of significant additional personnel.
- It is unclear whether the document verification procedure is meant to be implemented on a "day-forward" basis, or whether every licensed driver and identification card holder whose original identity documents were visually reviewed and accepted will be required to resubmit those documents for verification through the issuing agency. It is also unclear whether persons who hold a license or identification card at the time the Act becomes effective will be allowed to retain those documents until they expire or whether all licenses and identification cards will be considered null and void on that date. On this point, we would note that California has had a Social Security verification procedure in place for many years and we believe we have correctly identified our drivers and ID card holders by making sure their identities match their Social Security Administration records. In our view, re-verifying the original identity documents would serve little purpose. However, we will not know to what extent our licensing renewal programs will be affected until the final rules are issued.

Secretary Michael Chertoff

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- The Act limits the term of a license or ID card to no more than eight years. California's current "driver's license renewal-by-mail program" allows drivers with good records to renew their licenses either by mail or over the Internet for up to two renewal cycles. This means a driver in California with a "clean" driving record can go as long as 15 years before they must appear in-person at a DMV field office to renew the license. California also offers its senior citizens an identification card that is valid for ten years. We will need to know whether the eight-year limit specified in the Act will eliminate these programs and bring literally millions of additional applicants into our offices earlier than required under current law.
- Under the Act, the "residency" of all applicants for driver licenses and ID cards must be verified. We do not currently verify residency, and it is unclear how such verifications would be carried out. Here again, the impact from a staffing and budgetary viewpoint could be substantial depending on how the final rules define this procedure.
- The Act allows your department to approve the design of the license and ID cards and the nature of the security features that may be used. In California's case, our current driver license and ID card production contract expires in June 2006. Although we will likely exercise an extension clause that would add up to two additional years with our current vendor, California laws governing contracting are complex and require many months to complete. If significant new design requirements are imposed under the Act, this could lead to processing delays and significant increases in card production costs.
- There are several provisions in the Act that require all states to communicate with each other to verify status of a driver's license. For example, no state can issue a license to a driver previously licensed in another state until it verifies that the previous license has been cancelled by the issuing state. There is no current database that would facilitate such immediate confirmation, so a significant effort will be involved in developing this capability. States must have adequate time and resources to achieve compliance with these provisions.

The foregoing represents some of the issues that may significantly impact the way in which we issue licenses and ID cards in order to comply with the REAL ID Act. Until the final rules are promulgated, the full impact cannot be fully evaluated.

Secretary Michael Chertoff
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We are also anxious to learn to what extent the rule makers will be addressing the issue of providing a driving only permit as referenced in Section 202(d)(11) of the Act. These provisions make reference to a state's authority to issue a distinctively marked driver license that cannot be used for any identification purposes. This language has prompted the introduction of California Senate Bill 60 (Cedillo) currently under consideration in the State Legislature. We estimate that there are as many as two million undocumented immigrants residing in California, so enactment would have a significant impact on our operations. We believe this legislation is premature in that the federal rule making process may well prescribe limitations on these driving-only permits and we are hesitant to move forward with such a program until the full details of your regulations are known.

Thank you for considering these comments. We are anxious to work with you in addressing the many unresolved issues during the rulemaking process. If I can provide any additional information or clarification regarding these matters, please contact me at your convenience at (916) 657-6941.

Sincerely,

(original signed by Director Borucki)

JOAN M. BORUCKI
Director

cc: Governor Arnold Schwarzenegger
Sunne Wright McPeak, Secretary, Business, Transportation & Housing Agency
Matthew Bettenhausen, Director, California Office of Homeland Security

ATTACHMENT 2**MEMORANDUM OF UNDERSTANDING**

**UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION & NATURALIZATION SERVICE**

AND THE

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

UACA¹²⁰
(LUG.2)

MEMORANDUM OF UNDERSTANDING
Between the
United States Department of Justice
Immigration and Naturalization Service
and the
State of California
Department of Motor Vehicles

I. Purpose

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Justice, Immigration and Naturalization Service ("INS") and the State of California, Department of Motor Vehicles (User Agency). The purpose of the MOU is to establish the terms and conditions governing the participation of the User Agency in the INS' Systematic Alien Verification for Entitlement (SAVE) program, for the purpose of verifying the immigration status of alien applicants for driver licenses, state identification cards, certifications, permits and occupational licenses administered by the User Agency. SAVE procedures extended to the User Agency by this MOU will include an initial on-line inquiry by the User Agency to the INS (primary verification), and additional secondary verification procedures where applicable.

This MOU describes the respective responsibilities of the INS and the User Agency for verifying immigration status and properly safeguarding, using, maintaining, and disclosing data transferred between them pursuant to SAVE procedures. The requirements of the MOU will be carried out by authorized employees or contractor personnel of the INS and the User Agency.

The User Agency certifies that it needs the data it will receive pursuant to this MOU in order to make decisions concerning the issuance of driver licenses, state identification cards, certifications, permits and occupational licenses, and that it cannot procure the immigration status verification services requested pursuant to this MOU reasonably and expeditiously through ordinary business channels.

II. Legal Authorities

The statutes provided for in this MOU include, but are not limited to, the following:

Immigration and Nationality Act, 8 U.S.C. section 1101 et seq.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

Section 121 of the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, 42 U.S.C. section 1320b-7.

Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No.104-208, 110 Stat. 3009.

Intergovernmental Cooperation Act, 31 U.S.C. section 6501 et seq.

Privacy Act, 5 U.S.C. section 552a.

California Vehicle Code Section 12801.5

III. Implementation

A. The INS agrees to:

1. Maintain, and make available in pertinent part to the User Agency under SAVE, an alien status verification system know as the Alien Status Verification Index (ASVI), as described at 60 Federal Register 52694, 52697 (1995);
2. Respond through ASVI to inquiries from the User Agency by providing the current immigration status of each alien applicant to the User Agency, as available;
3. Provide to the User Agency operating instructions necessary to use ASVI, a sufficient number of primary verification user codes to assure the effective implementation of the verification procedures, and instructions for obtaining necessary system access codes;
4. Provide the User Agency with the name, address and telephone number of contact persons within the INS and its contractor who can be contacted regarding any questions or problems which arise in connection with the User Agency's participation in SAVE;
5. Process and respond to secondary verification requests submitted by the User Agency on Form G-845 (Document Verification Request) or using such other form or method as the INS may designate for secondary verification inquiries. The response times may vary, depending on the workload of the respective INS offices, the resources available to process secondary verification requests, and the applicant's specific circumstances;
6. Provide to the User Agency a camera copy of Form G-845, which may be reproduced or computer-generated with prior INS approval; and
7. Provide to the User Agency training and information regarding primary or secondary verification, relevant INS policy, safeguards regarding data, and INS administration of status verification;

B. The User Agency agrees to:

1. Provide to the INS available information necessary to verify alien applicants' immigration status, including the alien registration number for primary (automated) verification, and completed Forms G-845, copies of documents, or other information required for secondary verification.
2. Provide the INS with the names, addresses and telephone numbers of contact persons within the User Agency regarding any questions or problems which may arise in connection with the User Agency's participation in SAVE.

IV. Safeguards Regarding the Use and Disclosure of Data

Participation of the User Agency in SAVE shall be conducted so as to verify immigration status without regard to the sex, color, race, religion, or nationality of the alien involved. The INS and the User Agency shall comply with the Privacy Act, 5 U.S.C. section 552a, and other applicable law in conducting verification procedures pursuant to this MOU, and in the safeguarding, maintaining, and disclosing of any data provided or received pursuant to the MOU.

The User Agency agrees to use any information provided by the INS under this MOU solely for the purpose of determining the eligibility of persons for driver licenses, state identification cards, certifications, permits and occupational licenses under the authority granted to it by the laws of the United States of America and the State of California.

The User Agency shall not disclose any information provided by the INS under this MOU to any other person or entity without the prior written consent of the INS, except that prior written consent of the INS is not required for disclosure of such information to the alien applicant to whom it pertains upon the alien's written request, to the extent such disclosure is required or permitted by the laws or procedures governing the processing of applications by the User Agency. The User Agency expressly recognizes that this MOU does not permit it to use SAVE for the purpose of complying, or assisting any person or entity to comply, with the employment eligibility verification requirements of section 274A of the Immigration and Nationality Act, 8 U.S.C. section 1324a. SAVE is not designed for verifying U.S. citizenship or nationality, and may not be used for this purpose.

The INS reserves the right to use information received by it from the User Agency for any purpose permitted by law, including the prosecution of violations of Federal criminal law.

The INS will verify the immigration status of alien applicants pursuant to this MOU, but will make no recommendation to the User Agency whether to issue driver licenses, state

identification cards, certifications, permits and occupational licenses to any applicant. The User Agency has the sole right to determine eligibility.

V. Compensation

The User Agency shall pay the INS contractor responsible for operating ASVI at the standard billing rates, as determined by agreement between the INS and its contractor. The standard billing rates are subject to change upon prior written notification to the User Agency.

VI. Parties

This MOU is effective upon the signature of both parties, and shall continue in effect unless modified in writing by the mutual consent of both parties or terminated by either party upon 30 days prior written notice to the other party by certified or registered mail, return receipt requested. The INS may terminate this MOU without prior notice if deemed necessary because of a requirement of law or policy, upon a determination by the INS that there has been a breach of system integrity or security by the User Agency, or a failure by the User Agency to comply with established procedures or legal requirements.

This MOU is limited to the provision of verification services. It is not intended to be, and should not be construed as, an endorsement or opinion on the part of the INS or the United States regarding any provision of California's state law.

Execution of this MOU by the parties shall terminate, supersede and replace the previous MOU between the parties dated June 17, 1994.

The foregoing constitutes the full agreement on this subject between the INS and the User Agency.

The undersigned represent that they are authorized to enter into this MOU on behalf of the INS and the User Agency, respectively.


Scott O. Hastings

Director

Office of Files and Forms Management
Immigration and Naturalization Service


Sally R. Reed

Director

Department of Motor Vehicles
State of California

11/22/98
Date

4-2-98
Date

ATTACHMENT 3

CONTRACTUAL AGREEMENT WITH COMPUTER SCIENCES CORPORATION

ACCESS TO FEDERAL IMMIGRATION DATA AND CONFIRMATION OF AUTHENTICITY OF LEGAL PRESENCE DOCUMENTS

Scpr# 2740060435316

AGREEMENT NUMBER
TC03-005

This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF MOTOR VEHICLES

CONTRACTOR'S NAME

COMPUTER SCIENCES CORPORATION

The term of this Agreement is: March 01, 2004 through February 28, 2009

The maximum amount of this Agreement is: \$ 600,000.00

The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work 2 pages

Exhibit B – SAVE Transaction Pricing 1 pages

Exhibit C – General Provisions – Information Technology (Rev. 01/01/04) 10 pages

Terms shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at <http://www.documents.dqs.ca.gov/pd/modelland/GPIT012004.pdf>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

California Department of General
Services Use Only


GENERAL SERVICES

LEGAL SERVICES

W. G/2/04

DEPARTMENT OF GENERAL SERVICES
PROCUREMENT DIVISION

APPROVED

BY 

DATE 6/17/04

Exempt per:

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Computer Sciences Corporation

BY (Authorized Signature)

DATE SIGNED (Do not type)

2.12.04

PRINTED NAME AND TITLE OF PERSON SIGNING

Michael Casey, Sr. Contracts Admin.

ADDRESS

2001 L Street NW, Suite 1000
Washington, DC 20036

STATE OF CALIFORNIA

AGENCY NAME

Department of Motor Vehicles

BY (Authorized Signature)

DATE SIGNED (Do not type)

2-19-04

PRINTED NAME AND TITLE OF PERSON SIGNING

SHAMIM KHAN, Deputy Director, Administrative Services Division

ADDRESS

2415 First Avenue, Sacramento, CA 95818

SCOPE OF WORK

A. CONTRACT DESCRIPTION AND SCOPE

The purpose of this contract is to establish the terms and conditions under which the CSC will provide, to the California Department of Motor Vehicles (DMV), electronic access to the DHS SAVE Program's Verification Information System (VIS) database, via the new CPS, for the purpose verifying the immigration and work status of non-citizen applicants for licenses and identification cards.

B. CONTRACT TERM

The term of this contract shall be March 01, 2004 through February 28, 2009, or sixty (60) months from final approval date, and shall continue in force until terminated by either party upon at least thirty (30) days prior written notice.

C. CONTRACTOR RESPONSIBILITIES

1. CSC will provide electronic access to the immigration status information contained in the DHS SAVE Program VIS database via the CPS.
2. CSC will support the following access methods:
 - a. Web/Internet
 - b. Automated Secondary via 3270
 - c. Asynchronous Dial-up
 - d. Automated Secondary Batch
 - e. LU 6.2
3. CSC will provide technical support and other assistance as required and reasonable during the migration from the ASVI system to the new CPS.
4. CSC will provide ongoing technical support and will provide a point of contact for such support.
5. In addition to web access to CPS, the Contractor will also make a Help Desk available. The CPS Help Desk will be available from 7:00am EST to 9:00pm EST except for Thanksgiving, Christmas, and New Year's Day. The Help Desk Number is 1-800-741-5023. The Help Desk will be available to web users, 3270 users, and asynch users, for system availability questions or problems, and password resets. Additionally, this Help Desk will be available to assist the California DMV Help Desk with problem resolution related to LU6.2 and Automated Secondary Batch.
6. The contractor shall provide maximum response times for all access methods that are less than or equal to generally accepted response times for these access methods proposed. The current response times of 5 seconds or less for the on-line access method described herein, are considered generally accepted response times for those access methods. The contractor shall ensure that those response times are achieved at least 98 percent of the time. Response time is defined here as the elapsed time from the last entry of a query input (depression of the "ENTER" key) until the first meaningful character of output is returned for

display/presentation at the user terminal device or telephone, less any latency contributed by the user's system or access device. The user's system is defined as all network, hardware, and software components that reside outside of the contractor's data center facility.

7. The contractor shall maintain a 99.9 percent system availability for those components under their operational control, not to include the network, hardware, and software components that reside outside of the contractor's data center facility. System availability is defined as the system being fully operational and capable of responding to user queries during the posted hours of operation. Availability calculations shall include any contractor-controllable obstacles to system access such as busy signals, call queuing, and other communications-related impediments.
8. CSC is not responsible for the content of any information transmitted or received through CSC's provision of the services. In addition, CSC shall not be responsible for making any deliverables under the terms of this Agreement other than the access services described. CSC shall not enter upon SAVE Customer's state property, or premises in the course of its work under this Agreement. CSC's sole role is to provide a method of electronic access for SAVE Customers to utilize SAVE data.

D. STATES RESPONSIBILITIES

1. DMV will change user passwords every forty-five (45) days. (i.e. 45 days after contract execution and every 45 days thereafter). It is understood that if the password is not changed access will be deactivated.
2. DMV will provide access to business and technical documentation as necessary for the contractor to complete the tasks identified under this contract.
3. DMV will provide access to department staff, management, offices and operation areas as required to complete the tasks and activities defined under this contract.
4. DMV will access the CPS via one or more of the following currently supported access methods, or other access methods that CSC may support in the future:
 - a. Web/Internet
 - b. Automated Secondary via 3270
 - c. Asynchronous Dial-up
 - d. Automated Secondary Batch
 - e. LU 6.2
5. DMV will provide a virtual LU interface to the CPS to accommodate the 3270 access method.
6. DMV's Communications System (CAMVDCS) will act as a message switch between the DMV field office/headquarters systems and the CPS to accommodate the LU 6.2 access method.
7. Communication devices—such as modems, phone lines, front-end processors and installation surcharges are the responsibility of the DMV, and shall be acquired by the appropriate means in accordance with any functional requirements and/or Inter-Agency Agreements between the DMV, the Teale Data Center (TDC) and the Health and Human Services Data Center (HHSDC).

8. Ongoing costs for maintenance of communications equipment are the responsibility of the DMV, and/or the TDC or the HHSDC in accordance with any Inter-Agency Agreements in effect between those agencies.
9. The State Official responsible for overseeing the Contractor's performance and completion of requested services, and to whom all communications relative to those services be addressed, is identified under Section I - Other Contract Considerations.

E. FEES

The department agrees to pay for the use of CSC services on the basis of the department's actual utilization of services in accordance with charges in effect at the time of usage, as set forth in the SAVE Transaction Pricing schedule, Exhibit B.

F. OTHER CONTRACT CONSIDERATIONS

- Contractor Representative: _____
- DMV Project Representative: Terry Crownover, Manager
(916) 657-5897

SAVE Transaction Pricing

The following table represents the price structure, as of September 10, 2003, for all access methods for the 2004 federal government fiscal year.

Access Method	Primary Query	Secondary Query
AS3270 (A/I)	\$ 0.32	\$ 0.16
LU6.2	\$ 0.16	N/A
PC (SAVE1 / SAVE2 / SAVE3)	\$ 0.24	\$ 0.48
Web (SAVE 1 / SAVE2 / SAVE3)	\$ 0.24	\$ 0.48
AS Batch	\$ 0.04	\$ 0.03

Pricing is subject to change upon expiration of 2004 Federal Government fiscal year, which is September 30, 2004. New rates will be negotiated annually with GSA and DHS. SAVE customers will be notified of rate changes in advance, upon receipt from the Federal Government. An amendment to this Agreement, signed and approved by the appropriate parties, will effectuate the rate change.

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
- b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
- c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
- d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- e) **"Buyer"** means the State's authorized contracting official.
- f) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- h) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
- i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
- j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
- l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- m) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
- n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the

extent that such materials are described in or required by the Statement of Work.

- o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
- p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
- q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
- r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- u) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- w) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
 - ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
 - ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
 - gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
 - hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
 - ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
 - jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
 - kk) **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
 - ll) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
 - mm) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
 - nn) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
 - oo) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
 - pp) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:**
- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
 - b) If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
 - c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
 - b) If this Contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
 - c) To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
9. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State

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from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

11. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) these General Provisions – Information Technology;
- b) contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) information technology special provisions;
- d) statement of work, including any specifications incorporated by reference herein; and
- e) all other attachments incorporated in the contract by reference.

12. **PACKING AND SHIPMENT:**

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities

specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within sixty (60) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

17. **SAMPLES:**

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

18. **WARRANTY:**

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon acceptance of the Deliverable or service in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a

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Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference. Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

- b) Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
- c) Unless otherwise specified in the Statement of Work:
 - (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
 - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

20. **INSURANCE:** When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.

21. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- b) STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE-

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - (i) Stop work as specified in the Notice of Termination.
 - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - (iii) Terminate all subContracts to the extent they relate to the work terminated.
 - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
 - (i) The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - (ii) The total of:

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- A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
 - B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
 - d) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.
23. **TERMINATION FOR DEFAULT:**
- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii) Perform any of the other provisions of this Contract.
 - b) The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
 - c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
 - d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
 - (i) completed Deliverables,
 - (ii) partially completed Deliverables, and,
 - (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
 - e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."
24. **FORCE MAJEURE**
- Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
 - b) Acts of the federal or State government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Deliverables or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
25. **RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
 - b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
 - c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.
 - c) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.
26. **LIMITATION OF LIABILITY:**
- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
 - b) The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions

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herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

28. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

29. INVOICES:

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price; extended item price and invoice total

amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

- 30. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

- 31. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

- 32. **NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

- 33. **CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

- 34. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

- 35. **NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

36. DOCUMENTATION

- a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such

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Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

37. RIGHTS IN WORK PRODUCT:

- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
- e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

38. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA

- a) State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or

other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:

- i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

- (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or
- (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
- (iii) The modification by the State of the Equipment furnished hereunder or of the Software; or
- (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.

e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

40. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

41. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90

days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

42. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

43. FOLLOW-ON CONTRACTS:

- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
 - (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
 - (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
 - c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
 - (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
 - d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
44. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
45. **COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
46. **NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
47. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
48. **ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
 - b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
 - c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.
49. **DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.

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- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:

- (i) will receive a copy of the company's drug-free policy statement; and,
- (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

50. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

51. SWEATSHOP LABOR: In accordance with PCC Section 6108, Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials or supplies furnished to the State pursuant to this contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements of this paragraph.

52. RECYCLING: Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, Goods, supplies offered, or products used in the performance of this Contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

53. CHILD SUPPORT COMPLIANCE ACT: For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

54. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

55. UNION ACTIVITIES: For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that: by signing this agreement, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

- d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

56. ELECTRONIC WASTE RECYCLING ACT OF 2003: The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

ATTACHMENT 4

LETTER TO THE SECRETARY
DEPARTMENT OF HOMELAND SECURITY

FROM

DIRECTOR JOAN BORUCKI

“COMPLIANCE WITH MOU REQUIREMENT IN
THE REAL ID ACT”

DEPARTMENT OF MOTOR VEHICLES

OFFICE OF THE DIRECTOR
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



July 20, 2005

The Honorable Michael Chertoff, Secretary
United States Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

I am writing regarding the Memorandum of Understanding (MOU), dated April 22, 1998, executed between the California Department of Motor Vehicles and the United States Department of Justice, Immigration and Naturalization Service (copy attached).

We are interpreting Section 202(c)(3)(C) of the REAL ID Act, as contained in H.R. 1268, to require states to establish a MOU to utilize the Systematic Alien Verification for Entitlements (SAVE) to verify legal presence status of persons applying for drivers licenses and identification cards. The above referenced MOU has been in place for many years and has allowed the California Department of Motor Vehicles to access the SAVE system for the purposes stated in the Act. Therefore, we believe that we are already in full compliance with this requirement. However, to assist us in our planning and help assure our readiness to comply with the Act when the final rules are released, we would very much appreciate knowing your decision as to whether our current MOU fulfills this requirement.

Thank you for attention to this request. As mentioned in my earlier letter dated June 29, 2005, we are anxious to work with you in addressing the many unresolved issues regarding implementation of the REAL ID Act. If you have any questions, please contact me at your convenience at (916) 657-6941.

Sincerely,

JOAN M. BORUCKI
Director

Attachment

cc: Governor Arnold Schwarzenegger
Sunne Wright McPeak, Secretary, Business, Transportation & Housing Agency
Matthew Bettenhausen, Director, California Office of Homeland Security

**BRIEF GENERAL STATEMENT AND OUTLINE OF
SHORT AND LONG TERM GOALS
BY ROBERT PACHECO**

The California Occupational Safety and Health Appeals Board is an important part of California's program for protection of the workforce. It assures that employers providing jobs to meet the challenge of a growing population do so in a safe and productive manner.

The overall mission of the Appeals Board is to promote workplace safety through the application and enforcement of statutes and regulations. The Appeals Board administers and supervises all aspects of appeals, contests, motions, petitions and proceedings arising from citations issued by the Division of Occupational Safety and Health. The Board's Administrative Law Judges process the first level appeals and issue Orders or Decisions. The Board itself, on its own motion or on motion of either party to the appeal, reconsiders ALJ determinations by applying decisional, statutory and regulatory law in a consistent and reasoned manner.

Since my appointment in May 2005, I have had an opportunity to interact with board members, administrative judges, staff attorneys and support staff quickly putting myself in position to perform my role as member of the board. I am now familiar with the structural functioning of the board and the methods and manner of interaction between the three members and with the administrative judges and staff.

The new knowledge is supplemented by my recent experience as a member of the Legislature and my 30 years engaged in the practice of law. In those arenas I acquired a keen understanding of the interrelationship between the legislative and judicial process, which enhances my ability to understand the relationship between the OSHA legislation, the regulatory schemes, the OSHA agencies and elected officials.

All the foregoing has provided me an opportunity to assess what might be my short and long term goals as a full time board member.

SHORT TERM GOALS

One of the most important roles I hope to fulfill, as a new member of the Board, is to help bring into the interaction between board members a sense of cooperation and collegiality that will assist in improving productivity and consistency of decisions. The CAL-OSHA Appeals Board has recently been the subject of scrutiny because of delays in processing and ruling on appeals. At times some appeals have lingered for years. As a new member of the board that criticism concerns me as well as the fact that enforcement actions affecting the work place and employer duties and obligations have been delayed.

I am happy to see that a strong improving trend in disposing of appeals has been noticed during the past 8 months. However, the three years prior to the latter part of 2004 and early 2005 created a large backlog of appeals that need to be resolved. Petitions for reconsideration, which the Board itself must rule upon, likewise increased during those years. A significant number of legal issues raised by petitions are still awaiting decision by the board. The board needs to act as quickly as possible. As a short term goal I intend to make it a priority to review the basis for each petition and to assist in assuring that all efforts are made to have the board prepare the cases for an appropriate decision.

In the current year it is anticipated that an increasing number of appeals will be filed because of unresolved issues pending within the backlog of unresolved cases. Also, the board's work load is expected to increase because increased staffing at DOSH and recent regulatory changes will result in the issuance of more citations. With the recent confirmation of Candice Traeger as Chairwoman of the Board and the positive changes that have been initiated by her, with which I wholeheartedly agree, I anticipate there will be a greatly improved work environment for staff members and the Board. I plan to assist in enhancing those improvements by working closely with other board members and staff to assure expeditious resolution of pending cases.

LONG TERM GOALS

Historically, the Appeals Board, as the legislature intended, has tried to remain accessible to the litigants, with a procedure that is less formalized than Superior Court proceedings. Over the years, however, the issues presented as increasingly complex. The Board is addressing new legal issues such as interrelationships and responsibilities between multi-employers, and, work place health and safety issues complicated by technical and scientific changes in the law.

Perhaps for that reason, although a substantial number of individual employer/owners still represent themselves in proceedings before administrative law judges, most parties are represented by counsel in cases brought before the three member Board.

For those cases, I have observed that the Board itself does not have detailed rules of procedure and many matters have been addressed on an ad hoc basis. Although specific rules for administrative hearings are in place, no formal definitive regulations exist for the Board itself to guide it on disposing of motions and other legal procedures initiated by counsel.

It is clear that case law resulting from DAR's, the legal framework for providing guidance to administrative judges, should be consistent. Consistency in decisions using historical precedent is important to provide a fair interpretation of existing law. As an attorney, who relishes legal research and writing, I intend to develop and refine the legal framework upon which the judges and the parties must rely, making sure it is consistent, and clear.

Complementing that legal framework, the Board must have a state-of-the-art database for legal research and for case management. The present old and unsupportable Oracle database, have numerous deficiencies. It does not allow communication with other segments of the Cal-OSHA system. Inspection, citation, and disposition information is entered two to four times.

Having experienced the "computerization" of the court system, going from a paper mill to an electronic communication system that permits access to court files, allows electronic filing and gives the parties access to court decisions, gives me an opportunity to take a critical look at the system in use

by the Board. I therefore will look at that possible change as a long term goal as well.

An overall view of the intent of OSHA and what it has accomplished to date allows me to reflect on what the future holds for this Board and what it may seek to accomplish. Until passage of the act, personnel and management rarely had more than rudimentary safety and health training. Top management was little involved in hazard controls. Today the situation has been much improved but more needs to be accomplished.

Encouraging employers to increase direct training of workers to recognize hazards and participation of management in assuring that safety standards are maintained is critical for protection of the workforce. Fair enforcement of work safety standards to protect employees will be a high priority for me as I go forward in my position as a member of the board.

In conclusion, good attitude, cooperation, courtesy, fairness, open-mindedness and integrity are an important part of my long term goals. I intend to apply those principles to serving in my position on the board.

Goals for the Workers' Compensation Appeals Board – As Commissioner and Chairman

Joseph M. Miller

- To interpret the workers' compensation laws of the State by case law decision and to provide guidance through en banc decisions, which serve as precedent for the workers' compensation community.
- To provide leadership to my fellow commissioners and to the staff.
- To represent the Workers' Compensation Appeals Board in the community by participation in public seminars and other programs.
- To foster a sense of community with the Department of Industrial Relations, the Division of Workers' Compensation, and the District Offices.



California Regional Water Quality Control Board

Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

an C. Lloyd, Ph.D.
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

July 12, 2005

Ms. Nettie Sabelhaus
Senate Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Re: H. DAVID NAHAI - CONFIRMATION PROCESS FOR REGIONAL WATER
QUALITY CONTROL BOARD APPOINTMENT - RESPONSES TO SENATE RULES
COMMITTEE QUESTIONS

Dear Ms. Sabelhaus:

The following answers are in response to the letter from Senator Perata, dated June 16, 2005. For your ease of reference, the questions posed in Senator Perata's letter are repeated below. Most of the answers provided below are based on information and guidance provided by staff of the LA Regional Board.

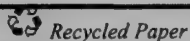
Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

I have been privileged to serve as a Board member since 1997. During this time, the Board has made great strides in the protection of the surface, ground and coastal waters of our Region. However, a great deal of work remains to be done; much of the groundwater of our Region is contaminated, urban run-off continues to pollute our coast, brownfields need to be rehabilitated, and the effective regulation of septic systems in our Region remains a challenge. I believe, however, that we are progressing towards the accomplishment of much of our mission. As examples, we have adopted TMDLs for bacteria, trash, metals, nutrients and other pollutants (much of the work of our Board in this area is ground-breaking), as well as comprehensive stormwater permits that lay the foundation for a meaningful reduction of stormwater pollution. We have also issued suitably protective permits to point source dischargers in our Region. I believe that in taking these measures, we have acted in accordance with the requirements of the law and with great sensitivity to the legitimate concerns of our stakeholders. It is my hope that during the next four years, the Board will continue on its course of meeting its legal and environmental obligations, while taking full account of the valid input of all stakeholders. Some examples would be the re-adoption of the MS4 municipal storm water permit, the continuing

JUL 15 2005

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

realization of our TMDL program, the refinement of our brownfields program, improvement of our outreach efforts to the community and our stakeholders, and the implementation of septic regulations.

State/Regional Board Roles

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?

The staff provides Board Members with a comprehensive meeting packet prior to each meeting. The material in the packet identifies each agenda item, provides pertinent background information and scientific data and notes any public comment received prior to Board consideration. During the Board meeting, we are provided with a detailed presentation on each agenda item by staff. Additionally, staff is always available to review or, if necessary, research water quality issues of concern. My experience with our staff is that they are very knowledgeable and responsive.

Consultations with fellow Board Members are constrained by law. The relationship between Regional Boards and the State Board is discussed below.

3. Do you have any suggestions on how they might better assist you?

I find that our staff members are eager to assist Board Members and understand the technical and legal issues involved in the matters before us. From time to time, it is helpful to have staff conduct additional briefings on highly complex issues. However, generally, each Board Member should ensure that he or she fully comprehends the case at hand, the Board's legal obligations and the ramifications of the proposed action.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

Upon being nominated to the Regional Board, counsel provided training on identifying, evaluating, preventing and reporting a potential or actual conflict of interest. During the Board's annual retreat, counsel again reviewed conflict of interest prohibitions. During meetings, workshops and similar gatherings, counsel assists Board Members with recognizing and successfully managing a decision or situation that could harbor a conflict of interest. Additionally, counsel has been available to discuss with individual Board Members whether or not a particular situation or action creates a potential or real conflict of interest.

To date, I have not been in a position of having to recuse myself from a Board decision.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?

So as to protect and maintain the integrity of the appeal process (i.e., State Boards reviews Regional Board actions), there is limited interaction between State Board and Regional Board members. The notable exception being the biannual meeting of State and Regional Board members to discuss general policy issues and set overarching goals and objectives for the Boards. At the staff level, there is regular—perhaps as often as daily—and substantial interaction between the boards.

Regarding coordination and accountability, I would support additional interaction between the State and Regional Boards, to promote better understanding by the Regional Boards of the policies and programs of the State Board, and by the State Board of the regional imperatives and conditions facing each Regional Board. In instituting such additional communications, however, care would have to be taken to safeguard both the oversight and appellate functions of the State Board and the autonomy and discretion of the Regional Boards.

6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations the regional boards?

The current Basin Planning process, which requires a public hearing followed by Regional Board approval which, in turn, is followed by a public hearing and State Board approval, is duplicative and inefficient. This process may have made sense when Basin Plan Amendments were few and far between, but in today's environment, the current process impedes the Regional Boards' ability to develop TMDLs. A more efficient approach would be to have Regional Boards adopt TMDLs and the State Board accept and act on any appeals, as is the case with permits.

In recent years, there has been a sizeable increase in the amount of bond money specifically dedicated to improving water quality. The State and Regional Boards have been responsible for evaluating and approving grant applications and for distributing grant money in a timely manner but without a commensurate increase in staff resources.

Although there have been some frustration and assertions by some grantees that the Board's procedures are inefficient, there are some valid reasons including the cost (approximately \$40 Million of projects in the LA RWQCB) for us to be cautious. There have been significant changes to expedite the selection

and award process over the last two years. We acknowledge that there is typically a year or more between when funding is announced and when a proposal is actually approved to start work. The selection process is intentionally rigorous to ensure that a valid and worthwhile proposal is selected.

In acknowledgment of the long time lines associated with grant approvals, our staff has been working on refining the list of high priorities for the next grant award cycle in an effort to reduce the amount of time spent on unsuccessful projects and speed up the processing of successful projects.

7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

All actions taken by the Regional Board's are taken in an open and transparent manner at a public meeting. I would support any and all steps to increase public involvement and scrutiny of our operations.

8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

No. The Region has been impacted over the last four years by budget cuts. Region 4 staffing levels have been reduced from 181 positions in 2001 to 149 positions currently. However, during this time there has not been a similar reduction in the amount of work to be performed. The universe of regulated facilities continues to expand, the number and complexity of water quality standards continues to increase and litigation continues to proliferate. Between 2001 and 2005, the Region was prohibited from hiring new staff. Only in the last few months has it been able to fill vacant positions. During the hiring freeze, a steady drain of talent and positions left the Region. The result has been seen in program reductions in many of our key programs. Requests to the State Board to re-examine the allocation of funds to more accurately reflect workloads and program commitments have been unsuccessful.

Regarding enforcement funding, the Region is also under funded. CalEPA has recently established a target of 15% of program resources to be allocated for enforcement purposes. Our Region has been allocated only 2.5 PY of dedicated funding for enforcement, which represents less than 2% of the Region's budget. To help offset this shortfall, this Region has reorganized and supplemented the dedicated enforcement funding with other program funds and has consolidated enforcement and stormwater compliance in one section. The total resources dedicated to compliance and enforcement represents 11% of the Region's budget, which are still short of this target.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean

California Environmental Protection Agency



enough for other beneficial uses. Would numeric limits in permits provide more consistency, accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus non point source pollution)?

Storm water permits have generally in the past incorporated Best Management Practices (BMPs) rather than numerical limitations to protect water quality. In part, federal storm water regulations promulgated in 1990 allowed for this approach because the characteristics of storm water discharges such as rainfall variability, frequency, and intensity, and the resulting pollutant washoff were not well understood at that time. Federal policy guidance issued in 2000 continues to authorize the use of BMPs in storm water permits even where TMDLs have been adopted for a particular receiving water because its beneficial uses have been impaired by pollutant discharges. However, where the permitting authority has sufficient data and information to establish numerical effluent limitations, it can do so under the policy.

Our Board has the experience of issuing permits for storm water discharges for more than a decade. Based on staff analyses, there appears to be sufficient data to develop numerical limits based on either technology performance or receiving water monitoring, for certain categories such as industrial storm water discharges and municipal storm water discharges. Undoubtedly, storm water permits with numerical limitations are better than narrative BMPs for purposes of ensuring consistency, accountability, efficiency, certainty and enforceability.

Non-point sources of pollution such as storm water runoff are more difficult to manage than point sources of pollution because of their diffuse nature. However, the U.S. Congress deemed it fit to bring certain categories of storm water such as municipal, industrial, and construction storm water, under the federal point source regulatory program called the National Pollutant Discharge Elimination System (NPDES), because of the desire to clean-up receiving waters from all sources of pollution. While difficult, cleaning up storm water pollution, which is contaminated by diffuse sources, is not impossible. Where there has been adequate characterization of the problem through science and research, numerical criteria can be established instead of narrative BMPs.

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Storm water permits should include numerical criteria rather than narrative BMPs where there is sufficient data and information to develop the criteria. Such criteria may either be expressed as numerical performance criteria based on best technology or numerical water quality criteria protective of beneficial uses. Both municipal and industrial storm water discharges in the LA Region have had more than a decade to implement narrative BMPs to adequately protect receiving

waters and beneficial uses. While certainly some progress has been made, the monitoring and assessment of receiving waters indicates that the control measures implemented to date have not been sufficient. Further the level of implementation across municipalities and industry has been uneven at best. Hence, the time appears appropriate to include numeric limits in storm water permits, to ensure a level playing field and improve permit consistency and enforceability.

Enforcement of Water Quality Laws

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

The Los Angeles Region has a dedicated enforcement staff, but as with any program, there are improvements that can and should be made. Over the past year, the staff has initiated a number of improvements to our enforcement program, which I have summarized below, but given the level of funding, we will only be able to address the highest priority enforcement actions.

The Region recently established an enforcement prioritization list that includes all program activities. This list is monitored by the regional executive management team in order to ensure that the enforcement activities reflect the highest priority cases across all program areas.

The Region is also piloting a standardized, structured compliance inspection process. Standardizing the inspection process would facilitate enforcement, as staff would better understand what information is necessary when pursuing an enforcement action.

Further, the Region cooperates with local, state and federal agencies when pursuing enforcement, and staff participates in task forces, and has begun to refer cases to prosecutors.

Our staff members are working with the State Board to standardize permits, where appropriate, to ensure consistency and clarity. Our Region has volunteered staff resources to help the State Board develop an automated system for the review of self-monitoring reports. However, given the current resources and the fact that over 3,000 reports are submitted annually in the Region for just the NPDES program, mastering this workload is a challenge.

Monitoring of enforcement activities happens through several avenues. Board Members are provided briefings and written updates on the enforcement activities. Board Members participate in enforcement hearing panels, which are scheduled as needed to resolve cases that do not settle. The full Board then reviews recommendations from hearing panels, and takes action. The full Board



reviews time schedule orders and cease and desist orders that are associated with permits. In addition, the Board Members participate in closed session discussions on confidential enforcement matters.

Water Quality Monitoring

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

The Surface Water Ambient Monitoring Program (SWAMP) is intended to be an umbrella program for coordination of comprehensive monitoring of the state's inland, estuarine and ocean waters. SWAMP's objective is to provide the Water Boards with comprehensive information on the status of beneficial uses (protection of fisheries, drinking water, etc.) in surface waters. SWAMP can do this by establishing a statewide framework for coordination of high quality, consistent and scientifically defensible methods and strategies to improve water quality monitoring, assessment and reporting.

Region 4 is a very large, heavily urbanized region with 10 watersheds. We are using SWAMP funds to sample each of the 10 watersheds at least once every 5 years on a rotational basis.

Unfortunately, SWAMP is severely underfunded. The program would require more than \$100 million per year to accomplish its ambitious objectives, but this program has been funded over the past five years at a level of \$3.5 million or less. Although the State and Regional Boards have been able to conduct some useful monitoring with these resources, it is impossible to adequately address the multiple objectives of the program at such a low level of funding. Additional funding is needed to pay for staff to design monitoring programs, coordinate monitoring conducted by various programs to improve efficiency and avoid redundancy, and evaluate monitoring data. Additional funding also is needed to support more actual monitoring, thus increasing the types of monitoring performed and allowing for sampling within more waterbodies and a higher frequency and intensity.

To partially offset these funding problems and to avoid redundancy and improve the efficiency of existing monitoring programs, we are working with other programs and stakeholders to develop integrated watershed monitoring programs where possible. In many cases we can coordinate SWAMP monitoring with TMDL monitoring, NPDES discharger self-monitoring programs, stormwater discharger monitoring programs, grant-funded monitoring programs, agricultural waiver monitoring programs, volunteer monitoring programs and other local efforts to improve the efficiency and increase the scope of our monitoring studies. However, other programs usually have their own objectives to satisfy,

somewhat limiting our ability to combine disparate monitoring studies into a single program.

Despite our efforts to improve and integrate existing monitoring programs, Region 4 simply does not have adequate funding to monitor water quality as thoroughly as we should throughout the entire region. Consequently, we are limiting our SWAMP monitoring to a single sampling event for each watershed every five years. Although we can very generally assess the condition of watersheds (at a single moment in time) in this manner and identify general problem areas, such infrequent monitoring generally is inadequate for determinations of impairment in specific areas (i.e., 303d listing) or for tracking of pollution sources.

We are focusing the SWAMP program on assessing protection of aquatic resources in wadeable streams (shallow inland waters), but we do not have sufficient funding to conduct monitoring in most lakes or reservoirs. Except in rare circumstances, we are not conducting microbiological monitoring, so we are not assessing protection of the beneficial uses involving water contact and non-contact recreation. We cannot afford to conduct trace metal and trace organic analyses at the majority of our sampling stations, so this monitoring is limited to selected sentinel stations at major confluences in a given watershed and at the outlets to the ocean. This provides some information on levels of toxics in our watersheds, but does not allow for tracking of sources.

In summary, Region 4 has taken steps to make monitoring programs more robust by integrating SWAMP monitoring with other programs. Although this improves the effectiveness of our monitoring, it is not the answer to the large funding shortfall faced by SWAMP. Basically, SWAMP requires a significant increase in funding to provide the staff resources needed and pay for implementation of additional monitoring components necessary to conduct adequate monitoring of our Region's waters and ensure protection of all beneficial uses.

13. SB 72 (Keuhl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

The purpose of SB 72 (Kuehl, 2001) was to standardize storm water reporting and monitoring for municipal and industrial storm water programs statewide. The State Water Board was required by the legislation to implement the standardization.

Our staff took a leading role in developing a model municipal storm water monitoring program under the auspices of the Storm Water Monitoring Coalition

(SMC) with a grant from the State Board. The SMC's work product for municipal storm water monitoring standardization included a standard storm water monitoring program, a standardized interlaboratory calibration protocol, and a standard data transfer format for data sharing, which were submitted to the State Board in April 2003. Future municipal storm water permits issued by the LA Board will incorporate the standard storm water monitoring and reporting program developed by the SMC.

For sometime, our staff has expressed concern about the standardization of the industrial storm water monitoring data. Staff obtained a competitive grant from the U.S. Environmental Protection Agency in 2000 to review the quality of the industrial storm water monitoring data that industrial permittees collected over more than a decade under the monitoring requirements of their storm water permits. Professor Michael Stenstrom at the University of California, Los Angeles (UCLA), performed the data analysis under contract with the LA Water Board, and provided recommendations in a report submitted to the State Board in January 2005. Future industrial storm water permits issued by the LA Water Board will consider the recommendations from the UCLA Report, with the purpose of standardizing the industrial storm water monitoring and reporting requirements and improving data quality.

Cleaning up Impaired Waters

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

The Los Angeles Region has acted with diligence to assess its waterbodies. As a result in 1998, our Region's 303(d) list represented approximately 50% of the pollutant, waterbody listed segments for the entire State. For the 2002 303(d) listing process, Regional Board staff solicited information from all interested parties/agencies conducting monitoring within the Region. Data received was compiled in electronic format and assessed by pollutant and water body reach to make determinations of impairment of beneficial uses, or the attainment of water quality objectives. Fact sheets, summarizing data source, analysis, and findings were provided, along with final recommendations for listing and de-listing, to State Board for Review and final approval. Regional Board Staff was also involved with providing extensive technical recommendations for the State Board's 303(d) Listing Policy that was released in September 2004. For the 2004 listing process, Regional Board staff reviewed proposed listings and de-listings, compiled by State Board, for accuracy and completeness.

The Los Angeles Region develops pollutant loads and "cleanup" programs designed to attain water quality standards through its TMDL program. The LA Region leads the State in the number of TMDLs adopted and approved by the State Board and EPA. Many of the TMDLs are precedent setting, including

TMDLs for trash, bacterial indicators, and metals. The TMDL staff work with stakeholders and outside experts, including environmental groups, local municipalities and counties, and universities to develop allocation strategies to attain water quality standards. As of December 2004, Region 4 had adopted more than 79% of all TMDLs adopted in the State, based on pollutant-water body combinations.

Areas that now need additional focus in order to achieve our goals of expeditiously cleaning up these waterbodies through the implementation of TMDLs include:

1. Improve Stormwater Monitoring

Stormwater discharges are a primary source of water quality impairments in the Los Angeles Region. The variability of pollutant concentrations during a storm are well recognized, yet existing compliance monitoring relies heavily on discrete grab sampling. It is essential that we improve our storm water monitoring procedures to better characterize pollutant loadings throughout the storm.

2. Convene a Stakeholder Wet-Weather Task Force

Regional Board staff has committed to establish a stakeholder wet-weather task force to evaluate the effects of pollutant loadings during large storm events. One of the primary assignments to the Task Force will be to make recommendations on optimum sizing of BMPs in terms of storm volume, short-term storm intensity, or both storm volume and storm intensity.

3. Require Rigorous Testing of BMP Effectiveness for Various Storm Sizes

The timely development of TMDLs, with the cooperation of stakeholders, will lead to expeditious cleanup of pollution. Some TMDLs rely heavily on stakeholder-led BMP effectiveness studies to determine the type and size of BMPs that will reduce pollutant loading and meet TMDL waste load allocations. A key component to BMP effectiveness studies will be an accurate accounting of the total pollutant loading as measured from a variety of storm events.

15. What steps would you take to implement identified pollutions loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

The Region's TMDLs provide implementation schedules for meeting interim and final waste load allocations. The implementation schedules should be as expeditious as practicable, taking into account all of the circumstances. Where a particular approach offers additional benefits (such as water supply benefits, creation of wetlands, etc.), such as an integrated water resources approach,

additional time may be provided in recognition of the greater complexity and additional benefits to the Region.

The Municipal Separate Storm Sewer System (MS-4), industrial and construction storm water permits are the primary vehicles for implementing waste load allocations for point sources of pollution in our Region. In Ventura County, where irrigated agriculture is a major nonpoint source, we will be considering a conditional Waste Discharge Requirement Waiver for Irrigated Agriculture (Ag Waiver).

Involvement of the key local agencies is important to developing a successful coordinated monitoring and implementation program to ensure reduction of pollutant loads and to improve water re-use. In Los Angeles County, the County and the City of Los Angeles have assumed major leadership roles. In Ventura County, the Calleguas Creek Watershed Management Plan Committee has completed stakeholder-led TMDL development. This organization includes participation by the POTWs, water purveyors, the County Watershed Protection Division, and others. The Ventura County Farm Bureau and other agricultural associations have been actively involved in developing the draft Ag Waiver. Their continued involvement and assistance to the farm community in developing monitoring and BMP effectiveness studies is to be encouraged.

The Region's TMDLs contain several re-assessment points, to allow progress reports to the Board. The Board may revise the TMDL implementation plan based on the progress reports or new information. For example, the Board will be reviewing the Santa Monica Bay and Marina del Rey Bacteria TMDL Implementation plans this fall. If the plans demonstrate a cogent and well-supported integrated water resources approach, the Board may consider extending the implementation schedule. If not, the existing 10-year schedule for wet weather may be upheld.

The Board can ensure that the TMDL waste allocations are or will be attained by approving permits that provide sufficient safeguards and by making sure that the permit conditions are enforced. This will be particularly important where permit conditions are expressed as BMPs. Where studies demonstrate that the selected BMPs sized for a specified design storm or storm intensity will meet the numeric waste load and load allocations, then permit conditions may be expressed in terms of BMPs. However, if the effectiveness studies are not performed or are found to be inadequate by the permit writer, permittees should be subject to numeric effluent limits consistent with TMDL waste load allocations.

Perchlorate

16. What is the extent of perchlorate contamination in your board's region? How has it impacted drinking water supplies?

There are currently a total of 143 drinking water wells within Los Angeles County and 4 within Ventura County that have reported two or more detections of perchlorate above the SDHS Action Level (AL) of 6 micrograms per liter ($\mu\text{g/L}$). These 143 wells represent a total of 40 drinking water systems.

The economic impact of perchlorate in groundwater is significant because conventional water treatment systems are unable to remove perchlorate. If local groundwater supplies cannot be used due to perchlorate impacts. This results in the loss of direct beneficial use of groundwater resources. If local groundwater supplies cannot be used due to perchlorate water purveyors have limited options to replace the water when wells are shut down, such as using other local groundwater supplies, purchasing imported water at a much greater cost or treating the water to remove perchlorate. Local groundwater supplies can generally be produced at approximately \$100 per acre-foot or less as compared to \$460 per acre-foot to import portable water. Ion exchange treatment technology demonstrated to remove perchlorate to the AL of 6 $\mu\text{g/L}$ (operation & maintenance) can add additional costs of \$125 per acre-foot in addition to any other treatment costs.

17. What is your board doing to address the problem? What types of monitoring and groundwater treatment have been ordered?

The Los Angeles Region has had an on-going program relating to the identification of source sites that have polluted groundwater resources with perchlorate since 1997. These activities commenced as a direct result of the early monitoring requirements of water purveyors by the SDHS for unregulated compounds, which includes perchlorate. The SGV Federal Superfund sites were the primary focus of Regional Board perchlorate efforts and activities between 1997 and 2002. During this period of time Regional Board staff directed Potentially Responsible Parties (PRP's) within a number of the Federal Superfund areas (e.g., Azusa, Baldwin Park, El Monte, South El Monte, Monrovia, and the Puente Valley) to sample and test for perchlorate as well as other emerging compounds. In 2000, Regional Board staff directed Lockheed in the San Fernando Valley Superfund area and NASA/JPL in the Raymond Groundwater Basin to sample and test for perchlorate. In 2002, Regional Board staff directed Boeing (Santa Susana Field Lab) and Ahmanson Ranch to sample and test for perchlorate.

Since late 2002, as a result of the increasing number of perchlorate detections and other emerging compounds in drinking water supplies and at PRP sites



located within the Federal Superfund areas, Regional Board staff has incorporated standard requirements for testing (soil and groundwater) and monitoring for perchlorate and other emerging chemicals at all sites conducting environmental assessment and cleanup, where appropriate.

In 2003, Regional Board staff sent out 433 letters to NPDES dischargers requesting a one time sampling for perchlorate, NDMA, 1,4-dioxane and hexavalent chromium to determine whether discharges to surface waters contained these pollutants. Perchlorate and other emerging compounds are now routinely screened as part of the application and permitting process prior to the issuance of NPDES Permits.

In March 2003, the Regional Board established the Perchlorate Public Advisory Group (PPAG) in response to the growing interest in perchlorate. The mission of the PPAG was twofold. First to provide an informal forum for the exchange of information about perchlorate, its impact to surface and groundwaters, and contaminant control and remediation technologies. Second, to provide meeting participants with information which will be helpful when developing, coordinating and implementing strategies to prevent, identify, control or remediate surface and groundwater pollution.

Subsequent to the formation of the PPAG, the Regional Board established a perchlorate web page on the Regional Boards web site to disseminate perchlorate specific information to the public.

Regarding water treatment, Regional Board staff are working closely with USEPA to implement SGV's Federal Superfund groundwater remedies that require the construction of water treatment plants designed to remove or reduce concentrations perchlorate in addition to other pollutants like VOCs, semi-volatile organic compounds, emergent chemicals (perchlorate, 1,4-Dioxane and N-Nitrosodimethylamine {NDMA}) and inorganic compounds like nitrates, phosphates, and Chromium VI. All of the drinking water treatment plants capable of treating perchlorate primarily operate in San Gabriel Valley. They were constructed in response to USEPA Superfund Records of Decision under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The following is a list of perchlorate-removing drinking water treatment plants:

- Valley County Water District Plant (La Puente)
- Monterey Park Plant (Monterey Park)
- Cal Domestic Plant (Whittier Narrows)
- San Gabriel Valley Water District Plant (Baldwin Park)
- Valley County Water District (Baldwin Park)

These plants can also remove other pollutants such as VOCs, 1,4-dioxane and NDMA.

I hope that the foregoing responses will be helpful to you. Should you have any questions, or wish to be provided with any further information, please do not hesitate to contact me.

Sincerely,



H. David Nahai

California Environmental Protection Agency



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

July 6, 2005



Senator Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata,

In response to your recent request for written responses to questions related to my pending appointment to the Los Angeles Water Quality Control Board, I offer the following comments. Please know this was a cooperative activity with staff of the local agency. It required a lot of time and effort but was a worthwhile exploration of the various important elements that impact the Board's efficacy. Please do not hesitate to contact me if I can provide you with further information. I look forward to hearing about the next steps in the confirmation process.

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the Board.

As President and CEO of VICA, a non-profit business advocacy organization, my goal is related to my day to day work of balancing business concerns with federal and state mandated regulations while meeting and complying with existing law. I carry that concern to this Board and my goal is make sure balance is considered when adopting new requirements for compliance on the regulated community.

2. What help do you receive from the state board, your regional board members and staff to assist you in better understanding some of the complex issues before you?

Prior to each meeting, Board Members are provided with the meeting packet usually contained in a number of huge notebooks. The material in the packet identifies each agenda item, provides pertinent background information, scientific data and notes any public comment received prior to Board consideration. During the Board meeting, we are provided a detailed presentation on each agenda item by staff. Additionally, staff is always available to review or, if necessary, research water quality issues of concern to us. I particularly seek out the Staff recommendations with their reasoning on item,

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3. Do you have any suggestions on how they might better assist you?

There is so much material that an Executive Summary that compresses the salient points on each agenda with its pros and cons would be greatly appreciated.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your boards' agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

Upon being nominated to the Regional Board, Counsel provided training on identifying, evaluating, preventing and reporting a potential or actual conflict of interest. During the Board's annual retreat, Counsel again reviewed conflict of interest prohibitions. During meetings, workshops and similar gatherings, Counsel assists Board Members with recognizing and successfully managing a decision or situation that could harbor a conflict of interest. Additionally, Counsel has made itself available to discuss with individual Board Members whether or not a particular situation or action creates a potential or real conflict of interest. I have also contacted counsel on a question about parliamentary procedures.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?

According to staff, so as to protect and maintain the integrity of the appeal process (i.e., State Boards reviews Regional Board actions); there is limited interaction between State Board and Regional Board members. The notable exception being the biannual meeting of State and Regional Board members to discuss general policy issues and set overarching goals and objectives for the Boards of which I have yet to attend. At the staff level, there is regular—perhaps as often as daily—and substantive interaction between the boards.

Regarding coordination and accountability, it might be helpful to initiate quarterly discussions—conference calls or in person meetings—to examine new or evolving issues of mutual concern and to apprise one another (staff and Board members) on common or shared activities. It would be helpful to discuss the statewide similarities of the regulated communities' approaches to compliance—success and failures in implementing BMPS, timeline, etc.

6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations the regional boards?

I am advised that Staff has identified two areas of operation that could benefit from increased efficiency: TMDLs and Grants.

The current Basin Planning process, which requires a public hearing followed by Regional Board approval which, in turn, is followed by another public hearing and State Board approval, is duplicative and inefficient. This process may have made sense when Basin Plan Amendments were few and far between, but in today's environment of developing TMDLs at an accelerated pace, the current process slows down the Regional Boards' ability to develop TMDLs at the pace needed to meet the consent decree. Staff suggests that a more efficient approach would be to have Regional Boards adopt TMDLs and the State Board accepts and acts on any appeals, as is the case with permits.

In the area of grants, in recent years, there has been an enormous increase in the amount of bond money specifically dedicated to improving water quality. The State and Regional Boards have been responsible for evaluating and approving grant applications and for distributing grant money in a timely manner but without a commensurate increase in staff resources.

Although there have been some frustration and assertions by some grantees that the Board's procedures are inefficient, there are some valid reasons including the cost (approximately \$40 million of projects in the LA RWQCB) for the Board to be cautious. There have been significant changes to expedite the selection and award process over the last two years. Staff acknowledges that there is typically a year or more between when funding is announced and when a proposal is actually approved to start work. The selection process is intentionally rigorous to ensure that valid and worthwhile proposals are selected.

In acknowledgment of the long time lines associated with grant approvals our staff has been working on refining our list of high priorities for the next grant award cycle in an effort to reduce the amount of time spent on unsuccessful projects and speed up the processing of successful projects.

7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

All actions taken by the Regional Board's are taken in an open and transparent manner at a public meeting. I would support any and all steps to increase public involvement and scrutiny of our operations. I encourage those interested in the budget to review the public website and follow up with questions at a regularly scheduled board meeting.

8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

No. I have been informed that the region has been impacted over the last four years by budget cuts. Region 4 staffing levels have been reduced from 181 positions in 2001 to 149 positions currently. However, during this time there has not been a similar reduction in the amount of work to be performed. The universe of regulated facilities continues to expand, the number and complexity of water quality standards continues to increase and litigation continues to proliferate. Between 2001 and 2005, the Region was prohibited from hiring new staff. Only in the last few months has it been able to fill vacant positions. During the hiring freeze a steady drain of talent left the Region. The result has been seen in program reductions in many of our key programs. Requests to the state board to re-examine the allocation of funds to more accurately reflect work loads and program commitments have been unsuccessful.

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The LA Water Board has the experience of issuing permits for storm water discharges for more than a decade. Based on staff analyses, there appears to be sufficient data to develop numerical limits based on either technology performance or receiving water monitoring, for certain categories such as

industrial storm water discharges and municipal storm water discharges. Undoubtedly, storm water permits with numerical limitations are better than narrative BMPs for purposes of ensuring consistency, accountability, efficiency, certainty and enforceability.

Non-point sources of pollution such as storm water runoff are more difficult to manage than point sources of pollution because of their diffuse nature. However, the U.S. Congress deemed it fit to bring certain categories of storm water such as municipal, industrial, and construction storm water, under the federal point source regulatory program called the National Pollutant Discharge Elimination System (NPDES), because of the desire to clean-up receiving waters from all sources of pollution. While difficult, cleaning up storm water pollution, which is contaminated by diffuse sources, is not impossible. Where, there has been adequate characterization of the problem through science and research, numerical criteria can be established instead of narrative BMPs.

10. Please explain your views on whether storm water permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Storm water permits should include numerical criteria rather than narrative BMPs where there is sufficient data and information to develop the criteria. Such criteria may either be expressed as numerical performance criteria based on best technology or numerical water quality criteria protective of beneficial uses. Both municipal and industrial storm water discharges in the LA region have had more than a decade to implement narrative BMPs to adequately protect receiving waters and beneficial uses. While certainly some progress has been made, the monitoring and assessment of receiving waters indicates that the control measures implemented to date have not been sufficient. Further the level of implementation across municipalities and industry has been uneven at best. Hence, the time appears appropriate to include numeric limits in storm water permits, to ensure a level playing field and improve permit consistency and enforceability.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

The Los Angeles Region has a hard working and dedicated enforcement staff that vigorously enforces water quality laws, but as with any program there are improvements that can and should be made. Over the past year the staff has initiated a number of improvements to our enforcement program, which I have summarized below, but given the level of funding we will only be able to address the highest priority enforcement actions.

The region recently established an enforcement prioritization list that includes all program activities. This list is monitored by the regional executive management team, to ensure that the enforcement activities reflect the highest priority cases and all program areas.

The region is piloting a standardized, structured compliance inspection process. Standardizing the inspection process throughout programs would facilitate enforcement. Program staff would benefit from understanding what information is necessary when pursuing an enforcement action.

The region is working with local, state and federal agencies when pursuing enforcement. Enforcement staff participate in task forces, and has begun to refer cases to prosecutors.

The staff in our region is working with the state board to standardize permits, where appropriate, to ensure consistence and clarity in language.

Our region has volunteered staff resources to help the state board in developing an automated system for review of self monitoring reports. However, given the current resources and the over 3,000 reports submitted annually in the Region for the just the NPDES program timely and thorough review of all reports will still be a major hurdle.

12. How does your board monitor the staff's enforcement practices?

Monitoring of enforcement activities happens through several avenues. Board members are provided briefings and written updates on the enforcement activities. Board members participate in enforcement hearing panels which are scheduled as needed to resolve cases that do not settle. The full board reviews recommendations from hearing panels and takes action. The board members review time schedule orders as well as cease and desist orders that are associated with permits. In addition, the board members participate in closed session discussions on confidential enforcement matters.

13. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

I am so advised that the Surface Water Ambient Monitoring Program (SWAMP) is intended to be an umbrella program for coordination of comprehensive monitoring of the state's inland, estuarine and ocean waters. SWAMP's objective is to provide the Water Boards with comprehensive information on the status of beneficial uses (protection of fisheries, drinking water, etc.) in surface waters. SWAMP can do this by establishing a statewide framework for coordination of high quality, consistent and scientifically defensible methods and strategies to improve water quality monitoring, assessment and reporting.

Region 4 is a very large, heavily urbanized region with 10 watersheds. Staff is using SWAMP funds to sample each of the 10 watersheds at least once every 5 years on a rotational basis. Their approach primarily relies upon a triad of indicators (water chemistry measurements, health of biological community, and toxicity testing) to assess overall water quality within each watershed and to determine whether conditions are getting better or worse over time.

Unfortunately, SWAMP is severely under funded. The program would require more than \$100 million per year to accomplish its ambitious objectives, but this program has been funded over the past five years at a level of \$3.5 million or less. Although the State and Regional Boards have been able to conduct some useful monitoring with these resources, it is impossible to adequately address the multiple objectives of the program at such a low level of funding. Additional funding is needed to pay for staff to design monitoring programs, coordinate monitoring conducted by various programs to improve efficiency and avoid redundancy, and evaluate monitoring data. Additional funding also is needed to support more actual monitoring, thus increasing the types of monitoring performed and allowing for sampling within more water bodies with a higher frequency and intensity.

To partially offset these funding problems and to avoid redundancy and improve the efficiency of existing monitoring programs, staff is working with other programs and stakeholders to develop integrated watershed monitoring programs where possible. In many cases staff coordinates SWAMP monitoring with TMDL monitoring, NPDES discharger self-monitoring programs, storm water discharger monitoring programs, grant-funded monitoring programs, agricultural waiver monitoring programs, volunteer monitoring programs and other local efforts to improve the efficiency and increase the scope of their monitoring studies. However, other programs usually have their own objectives to satisfy, somewhat limiting staff's ability to combine disparate monitoring studies into a single program.

Despite staff's efforts to improve and integrate existing monitoring programs, Region 4 simply does not have adequate funding to monitor water quality as thoroughly as it should throughout the entire region. Consequently, staff has to limit its SWAMP monitoring to a single sampling event for each watershed every five years. Although they can very generally assess the condition of watersheds (at a single moment in time) in this manner and identify general problem areas, such infrequent monitoring generally is inadequate for determinations of impairment in specific areas (i.e., 303d listing) or for tracking of pollution sources.

Staff is focusing the SWAMP program on assessing protection of aquatic resources in wadeable streams (shallow inland waters), but does not have sufficient funding to conduct monitoring in most lakes or reservoirs. Except in rare circumstances, staff is not conducting microbiological monitoring, so they

cannot assess protection of the beneficial uses involving water contact and non-contact recreation. They cannot afford to conduct trace metal and trace organic analyses at the majority of their sampling stations, so this monitoring is limited to selected sentinel stations at major confluences in a given watershed and at the outlets to the ocean. This provides some information on levels of toxics in our watersheds, but does not allow for tracking of sources.

In summary, Region 4 has taken steps to make monitoring programs more robust by integrating SWAMP monitoring with other programs. Although this improves the effectiveness of their monitoring, it is not the answer to the large funding shortfall faced by SWAMP. Basically, SWAMP requires a significant increase in funding to provide the staff resources needed and pay for implementation of additional monitoring components necessary to conduct adequate monitoring of our region's waters and ensure protection of all beneficial uses.

14. SB 72 (Keuhl, 2001) requires standardized storm water monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of storm water and storm water control measures. How is your board complying with SB 72 to standardize storm water monitoring?

The LA Water QC Board staff took a leading role in developing a model standard municipal storm water monitoring program under the auspices of the Storm Water Monitoring Coalition (SMC) with a grant from the State Water Board. The SMC is a partnership of the Southern California Municipal Storm Water Programs and the San Diego, LA, and Santa Ana Region Water Boards with the Southern California Coastal Water Research Project (SCCWRP) to foster storm water research and develop solutions to mitigate storm water pollution. The SMC's work product for municipal storm water monitoring standardization included a standard storm water monitoring program, a standardized interlaboratory calibration protocol, and a standard data transfer format for data sharing, which were submitted to the State Board in April 2003. Future municipal storm water permits issued by the LA Water Board will incorporate the standard storm water monitoring and reporting program developed by the SMC.

For sometime, the LA Water Board staff has expressed concern about the poor standardization of the industrial storm water monitoring data. Staff obtained a competitive grant from the U.S. Environmental Protection Agency in 2000 to review the quality of the industrial storm water monitoring data that industrial permittees collected over more than a decade under the monitoring requirements of their storm water permits. Professor Michael Stenstrom at the University of California, Los Angeles (UCLA), performed the data analysis under contract with the LA Water Board, and provided recommendations in a Report submitted to the State Board in January 2005. Future industrial storm water permits issued by the LA Water Board will consider the recommendations from the UCLA Report, with the purpose of standardizing the industrial storm water monitoring and reporting requirements and improving data quality.

15. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

The Los Angeles Region has always diligently assessed its water bodies. As a result in 1998, our Region's 303(d) list represented approximately 50% of the pollutant, water body listed segments for the entire state. For the 2002 303(d) listing process, Regional Board staff solicited information from all interested parties/agencies conducting monitoring within the region. Data received was compiled in electronic format and assessed by pollutant and water body reach to make determinations of impairment of beneficial uses, or the attainment of water quality objectives. Fact sheets, summarizing data source, analysis, and findings were provided, along with final recommendations for listing and de-listing, to State Board for Review and final approval. Regional Board Staff was also involved with providing extensive technical recommendations for the State Board's 303(d) Listing Policy that was released in September 2004. For the 2004 listing process, Regional Board staff reviewed proposed listings and de-listings, compiled by State Board, for accuracy and completeness.

The Los Angeles Region develops pollutant loads and "cleanup" programs designed to attain water quality standards through its TMDL program. The Los Angeles Region TMDL units lead the State in the number of TMDLs adopted and approved by the State Board and EPA. Many of the TMDLs are precedent setting, including TMDLs for trash, bacterial indicators, and metals. The TMDL staff work with stakeholders and outside experts, including environmental groups, local municipalities and counties, and universities to develop allocation strategies to attain water quality standards. As of December 2004, Region 4 had adopted more than 79% of all TMDLs adopted in the State, based on pollutant-water body combinations.

Areas that now need additional focus in order to achieve the goals of expeditiously cleaning up of these waters through the implementation of TMDLs include:

1. Improve Storm water Monitoring

Storm water discharges are a primary source of water quality impairments in the Los Angeles Region. The variability of pollutant concentrations during a storm are well recognized, yet existing compliance monitoring relies heavily on discrete grab sampling. It is essential that we improve our storm water monitoring procedures to better characterize pollutant loadings throughout the storm. Monitoring should include evaluation of both water column and sediment loads. This information is critical to identifying water quality impairments and for designing cost-effective treatment and control strategies.

2. Convene a Stakeholder Wet-Weather Task Force

Regional Board staff has committed, based on requests by the regulated community earlier this year, to establish a stakeholder wet-weather task force to evaluate the effects of pollutant loadings during large storm events. The Task Force is expected to work with data developed by the Southern California Coastal Water Research Project (SCCWRP) to advance the storm water loading information beyond event mean concentration values, to looking at "pollutographs" which graph the variability in pollutant concentration against rainfall and/or flow throughout the storm. The Task Force may also review the relationship between suspended and settleable solids in storm water discharges with pollutant loadings. This knowledge will help stakeholders design structural best management practices (BMP) strategies to control and treat pollution. One of the primary assignments to the Task Force will be to make recommendations on optimum sizing of BMPs in terms of storm volume, short-term storm intensity, or both storm volume and storm intensity. I am particularly anxious to have this program begin.

3. Require Rigorous Testing of BMP Effectiveness for Various Storm Sizes

The timely development of Total Maximum Daily Loads (TMDLs), with the cooperation of stakeholders, will lead to expeditious cleanup of pollution. The Metals and Toxics TMDLs, which are being considered by our Board this July and August, rely heavily on stakeholder-led BMP effectiveness studies to determine the type and size of BMPs that will reduce pollutant loading and meet TMDL waste load allocations. A key component to BMP effectiveness studies will be an accurate accounting of the total pollutant loading as measured from a variety of storm events. This accounting will require flow-weighted sampling or more frequent discrete grab sampling throughout the storm event and correlation with nearby rain gauges to quantify effectiveness for various storm sizes.

16. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they take this responsibility?

Based on advice from staff I submit the following information. The Region's TMDLs provide implementation schedules for meeting interim and final waste load allocations. The implementation schedules should be as short as possible, taking into account the need for additional permits, design and engineering, etc. to accomplish the final solution. Where a particular approach offers additional benefits (e.g. water supply benefits, creation of wetlands, etc.), such as an integrated water resources approach, additional time may be provided in recognition of the greater complexity and additional benefits to the Region.

The Municipal Separate Storm Sewer System (MS-4), industrial and construction storm water permits are the primary vehicles for implementing waste load

allocations for point sources of pollution in our region. In Ventura County, where irrigated agriculture is a major non-point source, we will be considering a conditional Waste Discharge Requirement Waiver for Irrigated Agriculture (Ag Waiver).

Involvement of the key local agencies is important to developing a successful, coordinated monitoring and implementation program to ensure reduction of pollutant loads and to improve water re-use. In Los Angeles County, the County and the City of Los Angeles have assumed major leadership roles. In Ventura County, the Calleguas Creek Watershed Management Plan Committee has completed stakeholder-led TMDL development. This organization includes participation by the POTWs, water purveyors, the County Watershed Protection Division, and others. The Ventura County Farm Bureau and other agricultural associations have been actively involved in developing the draft Ag Waiver. Their continued involvement and assistance to the farm community in developing monitoring and BMP effectiveness studies needs to be encouraged.

The Region's TMDLs contain several re-assessment points, to allow progress reports to the Board. The Board may revise the TMDL implementation plan based on the progress reports or new information. For example, the Board will be reviewing the Santa Monica Bay and Marina del Rey Bacteria TMDL Implementation plans this fall. If the plans demonstrate a cogent and well-supported integrated water resources approach, the Board may consider extending the implementation schedule. If not, the existing 10-year schedule for wet weather may be upheld.

The Board can ensure that the TMDL waste allocations are or will be attained by approving permits that provide sufficient safeguards and by making sure that the permit conditions are enforced. This will be particularly important where permit conditions are expressed as BMPs. Where studies demonstrate that the selected BMPs sized for a specified design storm or storm intensity will meet the numeric waste load and load allocations, then permit conditions may be expressed in terms of BMPs. However, if the effectiveness studies are not performed or are found to be inadequate by the permit writer, permittees should be subject to numeric effluent limits consistent with TMDL waste load allocations.

17. What is the extent of perchlorate contamination in your board's region? How has it impacted drinking water supplies?

According to staff, there is currently a total of 143 drinking water wells within Los Angeles County and 4 within Ventura County that have reported two or more detections of perchlorate above the SDHS Action Level (AL) of 6 micrograms per liter (yg/L). These 143 wells represent a total of 40 drinking water systems.

The economic impact of perchlorate in groundwater is significant because conventional water treatment systems are unable to remove perchlorate. If local

groundwater supplies cannot be used due to perchlorate impacts this results in the loss of direct beneficial use of groundwater resources and water purveyors will have limited options to replace the water when wells are shut down, such as using other local groundwater supplies, purchasing imported water at a much greater cost or treating the water to remove the perchlorate. Local groundwater supplies can generally be produced at approximately \$100 per acre-foot or less as compared to \$460 per acre-foot to import portable water. Ion exchange treatment technology demonstrated to remove perchlorate to the AL of 6 µg/L (operation & maintenance) can add additional costs of \$125 per acre-foot in addition to any other treatment costs.

18. What is your board doing to address the problem? What types of monitoring and groundwater treatment have been ordered?

I am told that the Los Angeles Region has had an active program relating to the identification of source sites that have polluted groundwater resources with perchlorate since 1997. These activities commenced as a direct result of the early monitoring requirements of water purveyors by the SDHS for unregulated compounds, which includes perchlorate. The SGV Federal Superfund sites were the primary focus of Regional Board perchlorate efforts and activities between 1997 and 2002. During this period of time Regional Board staff directed Potentially Responsible Parties (PRP's) within a number of the Federal Superfund areas (e.g., Azusa, Baldwin Park, El Monte, South El Monte, Monrovia, and the Puente Valley) to sample and test for perchlorate as well as other emerging compounds. In 2000, Regional Board staff directed Lockheed in the San Fernando Valley Superfund area and NASA/JPL in the Raymond Groundwater Basin to sample and test for perchlorate. In 2002, Regional Board staff directed Boeing (Santa Susana Field Lab) and Ahmanson Ranch to sample and test for perchlorate.

Since late 2002, as a result of the increasing number of perchlorate detections and other emerging compounds in drinking water supplies and at PRP sites located within the Federal Superfund areas, Regional Board staff has incorporated standard requirements for testing (soil and groundwater) and monitoring for perchlorate and other emerging chemicals at all sites conducting environmental assessment and cleanup, where appropriate.

In 2003, Regional Board staff sent out 433 letters to NPDES dischargers requesting a one time sampling for perchlorate, NDMA, 1,4-dioxane and hexavalent chromium to determine whether discharges to surface waters contained these pollutants. Perchlorate and other emerging compounds are now routinely screened as part of the application and permitting process prior to the issuance of NPDES Permits.

In March 2003, the Regional Board established the Perchlorate Public Advisory Group (PPAG) in response to the growing interest in perchlorate. The mission of

the PPAG was twofold. First to provide an informal forum for the exchange of information about perchlorate, its impact to surface and groundwaters, and contaminant control and remediation technologies. Second, to provide meeting participants with information which will be helpful when developing, coordinating and implementing strategies to prevent, identify, control or remediate surface and groundwater pollution.

Subsequent to the formation of the PPAG, the Regional Board established a perchlorate web page on the Regional Boards web site to disseminate perchlorate specific information to the public.

Regarding water treatment, Regional Board staff are working closely with USEPA to implement SGV's Federal Superfund groundwater remedies that require the construction of water treatment plants designed to remove or reduce concentrations perchlorate in addition to other pollutants like VOCs, semi-volatile organic compounds, emergent chemicals (perchlorate, 1,4-Dioxane and N-Nitrosodimethylamine {NDMA}) and inorganic compounds like nitrates, phosphates, and Chromium VI. All of the drinking water treatment plants capable of treating perchlorate primarily operate in San Gabriel Valley. They were constructed in response to USEPA Superfund Records of Decision under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The following is a list of perchlorate-removing drinking water treatment plants:

- Valley County Water District Plant (La Puente)
- Monterey Park Plant (Monterey Park)
- Cal Domestic Plant (Whittier Narrows)
- San Gabriel Valley Water District Plant (Baldwin Park)
- Valley County Water District (Baldwin Park)

These plants can also remove other pollutants such as VOCs, 1,4-dioxane and NDMA.

For your information staff has provided brief project updates for the Aerojet and the NASA Jet Propulsion Laboratory (JPL) sites:

1. AEROJET SITE (BALDWIN PARK)

Aerojet is located in the Baldwin Park Operable Unit, a Superfund Site in San Gabriel Valley. During its operations since the 1940s, Aerojet contaminated site soils and groundwater in Baldwin Park with perchlorate and other chemicals, such as, volatile organic compounds (VOCs). As a result of its operations, Aerojet was named under Superfund as one of the largest contributors to the groundwater contamination in Baldwin Park in 1995. Presently, it is coordinating with 18 other responsible parties to fund and cleanup the perchlorate and other contaminants in groundwater. The groundwater contamination plume (including

perchlorate contamination) is approximately 7 miles long and 2 miles wide, and has impacted many water supply wells in that area. Ion exchange technology is being used to remove the perchlorate.

Under a cooperative agreement with USEPA, the Los Angeles Regional Board staff evaluated over 1,000 suspected responsible parties for the Baldwin Park groundwater contamination from 1987 to 1995. As a result these efforts, USEPA named Aerojet and others as responsible parties in Baldwin Park. In 1999, twelve cleanup and abatement orders were issued to responsible parties (including Aerojet) in Baldwin Park for soil assessment and cleanup, and groundwater sampling and monitoring. Aerojet is still conducting groundwater monitoring of perchlorate, and is required by this Regional Board to remediate perchlorate contamination in soils at its facility. Perchlorate contamination in soils at the Aerojet facility has been detected up to 2,000 parts per billion. USEPA is lead agency overseeing the groundwater treatment within Baldwin Park.

2. NASA JPL SITE (PASADENA)

Quarterly groundwater monitoring has been conducted at the NASA Jet Propulsion Laboratory (JPL) Site since January 2003. The maximum perchlorate concentration detected at the NASA JPL Site during the February 2004 groundwater monitoring event was 7,690 micrograms per liter ($\mu\text{g/L}$). The perchlorate plume originating from the source area at the NASA JPL Site appears to have migrated 3.25 miles down gradient and offsite. Four Monk Hill water supply wells belonging to Pasadena Water and Power (PWP) were contaminated with JPL's perchlorate plume and had to be shut down in September 2002. Five additional PWP wells were also shut down because of perchlorate contamination probably also originating from the JPL site. NASA JPL is currently in the process of installing new down gradient groundwater monitoring wells to define the extent of its plume.

To remediate the perchlorate and volatile organic compound (VOCs) contamination in groundwater at the site, NASA JPL submitted a Revised Final Operable Unit 1 (OU-1) Expanded Treatability Study Work Plan dated October 2003 to the Regional Board. The work plan proposed extraction of contaminated perchlorate and VOCs contaminated groundwater, onsite treatment of VOCs first by liquid granular activated carbon (LGAC) and then of perchlorate by Fluidized Bed Reactor (FBR) and Multimedia Filter, followed by injection of treated groundwater back to the aquifer. Regional Board staff approved the Work Plan subject to compliance with additional requirements including performance of an onsite aquifer test, compliance with State Department of Health Services (SDHS) notification levels during groundwater treatment before injection, and quarterly groundwater monitoring. The groundwater treatment system design was also approved by the SDHS, and the system has been operating at the design rate of

150 gallons per minute since the first quarter of 2005, and has been successfully meeting the required SDHS effluent concentration AL of 6 µg/L for perchlorate.

According to Operable Unit 1 Quarterly Progress Report, Expanded Treatability Study System Operations, January to March 2005, dated April 11, 2005, 4,750,000 gallons of perchlorate-contaminated groundwater had been extracted, treated to less than 2 µg/L, and re-injected into the aquifer. Regional Board remedial project manager (RPM) has been participating in monthly meetings with representatives of NASA JPL, USEPA, CA DTSC, CA DHS, PWP, Lincoln Avenue Water Company, Foothill Municipal Water District, Raymond Basin Management Board to discuss the progress of groundwater cleanup and monitoring. Regional Board staff has also participated in several public meetings.

Thank you. I hope these answers are helpful.

Sincerely,

A handwritten signature in cursive script that reads "Bonny L. Herman". The signature is written in dark ink and is positioned below the word "Sincerely,".

Bonny L. Herman
President & CEO, VICA

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